

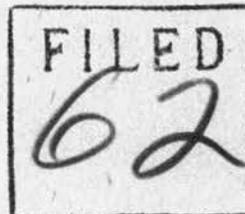
MAGISTRATE COURTS:
CIRCUIT COURTS:
FILING FEES:

Refund to plaintiff of filing fee paid to
Magistrate Court when change of venue is
taken to Circuit Court.

April 6, 1950

4/7/50

Honorable Willis H. Mitchell,
Judge of the Probate and Magistrate Court,
Ava, Missouri.



Dear Judge Mitchell:

We have your recent request for an opinion from this office. In your letter of request you state substantially as follows:

"The plaintiff files a civil action in the Magistrate Court, and pays his \$5.00 filing fee. Under the present law the Clerk of said court in turn sends the fee to the State at the end of the month.

"The defendant takes a change of venue and the Magistrate sends the case to the Circuit Court. The clerk of the Magistrate Court files his transcript with the Circuit Clerk, showing the \$5.00 as costs. The case is then heard in the Circuit Court, and the plaintiff wins, entitling him to a refund of the \$5.00.

"The questions submitted are:

"By what authority can the Circuit Clerk collect the amount of the fee from the defendant; what happens if the defendant doesn't pay, and what entries should the Circuit Clerk show so that his books balance?"

As your letter suggests, the filing fee paid into the Magistrate Court by the plaintiff is not forwarded to the Circuit Court upon a change of venue, but instead is sent to the Director of Revenue or the County Treasurer as provided in Section 23a, p. 776, Laws of Mo. 1945. We are enclosing an opinion of this office, dated March 5, 1948, addressed to the Honorable W. L. Halbrook, Judge of the Probate Court, Dent County, which rules on the disposition of the filing fee in cases similar to yours.

You ask under what authority can the Circuit Clerk collect this \$5.00 from the unsuccessful defendant?

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It would seem that this \$5.00 filing fee, for purposes of your question, should simply be treated as part of those ordinary costs for which the losing party is liable as provided in Section 1406 R.S. Mo. 1939, as follows:

"In all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law."

As to enforcing the collection of the costs from the defendant, we refer you to Section 1433 R.S. Mo. 1939 as follows:

"In all cases where costs shall be awarded, either before or upon final judgment, execution shall be issued therefor forthwith by the clerk, unless otherwise ordered by the party in whose favor such costs shall be awarded."

Finally, you inquire as to what entries the Circuit Clerk should make, regarding the \$5.00 fee, so that his accounts are in balance. As you state, the transcript sent up to the Circuit Court will show that a \$5.00 filing fee has been paid into the Magistrate Court. However, since the fee is required to be paid to the Director of Revenue or the County Treasurer, as explained above, the Circuit Clerk is not charged with receiving the fee and need not record it as a cash receipt in his books. Since he neither receives the original fee, nor pays it out, as such, there would not appear to be any difficulty in balancing his accounts.

CONCLUSION

It is, therefore, the opinion of this office, that the Circuit Clerk should, in case of a change of venue in a civil matter, collect the costs, including the \$5.00 Magistrate Court filing fee paid by plaintiff from the unsuccessful defendant, and may enforce said collection under the provisions of Section 1433 R.S. Mo. 1939. (2) Said filing fee should not be forwarded from the Magistrate Court to the Circuit Court and the clerk of the latter should show

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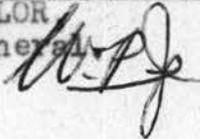
on his books, that this was paid to Magistrate Court, but should not show it as collected by the Clerk of the Circuit Court.

Respectfully submitted,

H. JACKSON DANIEL,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
Attorney General



HJD:cg