

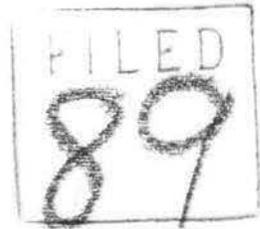
PROSECUTING ATTORNEYS:
COUNTY COURTS:
COUNTY HOSPITALS:
CIRCUIT COURTS:
MAGISTRATE COURTS:
COSTS:
COURT RULES:
FILING FEES:

(1) A prosecuting attorney may not compromise and settle an action for the collection of county hospital accounts on his own initiative but must have express approval of any such compromise settlement from the county court
(2) Circuit judges and judges of the magistrate court have authority to require the payment of court costs or a docket fee in advance at the time of filing suit and

counties would have to comply with such rule and pay whatever costs or docket fee are required by the rule when filing suit in such court with the exception of that part assessed as the library fee in circuit courts and that part assessed as the six dollar filing fee in magistrate courts. (3) A prosecuting attorney has no authority to forward delinquent county hospital accounts to an out of state attorney for collection. Any such arrangements must be made by the county court.

November 14, 1961

Honorable Francis Toohey, Jr.
Prosecuting Attorney
Perry County
Perryville, Missouri



Dear Mr. Toohey:

This is in answer to your letter of May 19, 1961, requesting an opinion of this office on the following questions:

- "1. May a delinquent hospital account which has been placed in the hands of the Prosecuting Attorney for collection and where the party thereto is living in a distant state be forwarded to an attorney in another state for collection.
2. May a county in Missouri in which a suit is filed by the Prosecuting attorney on delinquent hospital accounts insist that the court costs including sheriff fees be paid in advance before filing the case.
3. May the Prosecuting Attorney once such delinquent hospital accounts are placed in his hands compromise and settle said accounts upon his own judgment or must he have the consent of the entire hospital board before compromising the same."

The hospital accounts referred to in your opinion request are those of a county hospital. The questions propounded in the opinion request will be answered in reverse order.

In answering the question concerning the authority of the Prosecuting Attorney to compromise and settle the accounts of

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the county hospital, we first turn to the applicable statutes.

Section 56.060, RSMo 1959, provides in part:

"Each prosecuting attorney shall commence and prosecute all civil and criminal actions in his county in which the county or state is concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county. * * *"

Section 56.070, RSMo 1959, provided in part:

"The prosecuting attorney shall represent generally the county in all matters of law, investigate all claims against the county, and draw all contracts relating to the business of the county. * * *"

In *State v. Hoeffner*, 28 S.W. 5, it was held that the Prosecuting Attorney could not compromise a forfeited recognizance and at loc. cit. 7 it is said:

" * * * The rule is well settled that, in the absence of express authority, an attorney has no power to compromise his client's suit, or to satisfy his judgment without receiving the amount thereof. * * *"

Accordingly, it is our opinion that the prosecuting attorney may not compromise and settle the county hospital accounts on his own initiative. Before any compromise settlement of the account can be made, express approval of the county court must be obtained.

In answer to your question concerning the payment of court costs in advance, we first consider the situation of a case filed in circuit court. We are unable to find a statute which specifically exempts a county from prepaying court costs or depositing a docket fee when suit is instituted originally in circuit court. Sections 514.010 and 514.020, RSMo 1959, concerning the giving of security for the payment of costs are not applicable to this problem of depositing costs or a docket fee at the time of commencement of the suit. It is a matter of common knowledge that circuit courts

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usually require the deposit of a docket fee at the time of filing of a suit. These docket fees vary in amount between different circuit courts. In the absence of a statute specifically authorizing such a docket fee it is presumed that the docket fee required in any particular circuit court is authorized by rule of the local circuit judge. Circuit judges are empowered to make such rules by Supreme Court Rule 50.01, which reads as follows:

"Courts of Appeals and trial courts may make rules governing the administration of judicial business if the rules are not contrary to the rules of the Supreme Court, to the Constitution or to statutory law in force."

There is no exemption for counties under the provisions of Supreme Court Rule 50.01. By Sections 514.440 and 514.470 counties are exempted from the payment of that part of a docket fee which is assessed as a library fee. With the exception of the library fee, the question of whether a county is required to pay court costs or a docket fee in advance at the time of filing suit would depend on the wording of the applicable rule of the local circuit judge. Unless exempted by the wording of the rule of the local circuit judge, counties would have to comply with such rule and pay whatever costs or docket fee are required by the rule, with the exception noted above of that part assessed as a library fee.

We next turn to the situation of a case filed in magistrate court and refer you to Section 483.615, RSMo 1959, which reads in part as follows:

"1. A fee of six dollars shall be allowed the magistrate in each civil proceeding, general or special, instituted in his court. Upon the commencement of any such proceedings in the magistrate court except in cases instituted by the state, county or other political subdivision the party commencing the same shall pay to the clerk of said court such magistrate fee of six dollars.
* * *"

This statute specifically exempts a county from paying the six dollar filing fee in advance in magistrate court. The monetary

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limit of the jurisdiction of the magistrate court is \$1,000.00 in most counties (Section 482.090, RSMo 1959). As a practical matter this limit would accommodate the filing of the great majority of suits on delinquent hospital accounts.

In regard to the situation in a magistrate court where the magistrate judge has promulgated a rule governing the filing of suits in that particular magistrate court and by those rules requires the payment in advance of court costs or docket fees, we hold that the judge of the magistrate court has authority to make such a rule. There may be some question as to whether this authority is derived from Supreme Court Rule 50.01 quoted above in this opinion in view of Supreme Court Rule 41.02 which governs the applicability of the Supreme Court Rules of Civil Procedure and which states that "where specifically provided, the rule shall govern proceedings in magistrate courts", and we do not rule on this point. In any event Section 5 of Article V of the 1945 Constitution of Missouri, Supreme Court Rule 41.02 and Supreme Court Rule 50.01 do not prohibit a magistrate court from making rules to govern the practice in the magistrate court. A magistrate court is a court of record (Section 517.050 RSMo 1959). It is well established law that a court of record has authority to make rules governing the practice by them. In *Mackson v. Metropolitan Life Ins. Co.*, 115 S.W. 2d 217, 1.c. 218, it is said:

"That courts of record have authority to make rules governing the practice before them, when in harmony with the law, is beyond question. *Brooks v. Boswell*, 34 Mo. 474. The rule invoked in this case was within the power of the court to make, and was a reasonable regulation. When a rule of practice that is reasonable and proper is thus made, and is known to the bar, it is the duty of the court to enforce it. If the court should disregard its own rule, it would thereby suffer the rule to become misleading to those who follow it, and work injustice.' *Rigdon v. Ferguson*, 172 Mo. 49, 72 S.W. 504, 505."

We therefore hold that the judge of a magistrate court may make a rule requiring the payment in advance of court costs or

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a docket fee before a case can be filed in magistrate court. Such a rule would generally be in conformity with law. However, a county would be exempt from the payment of that part of the court costs or docket fee which is assessed as the six dollar filing fee under Section 483.615 RSMo 1959, quoted above. With the exception of this six dollar filing fee, the question of whether a county is required to pay court costs or a docket fee in advance at the time of filing suit in magistrate court would depend on the wording of the applicable rule of the local magistrate court. Unless exempted by the wording of the rule of the local magistrate court, counties would have to comply with such rule and pay whatever costs or docket fee are required by the rule, with the exception noted above of that part assessed as the six dollar filing fee under Section 483.615 RSMo 1959.

Our opinion would therefore depend on the rule of the local circuit judge or local magistrate court.

Circuit judges and judges of the magistrate court have authority to require the payment of court costs or a docket fee in advance at the time of filing suit and counties would have to comply with such rule and pay whatever costs or docket fee are required by the rule when filing suit in such court with the exception of the library fee in circuit courts and the six dollar filing fee in magistrate courts.

We now turn to your question concerning forwarding accounts to an attorney in another state for collection. In order to obtain the services of an attorney in another state, such attorney would have to be paid. If the out of state attorney were employed at the expense of the prosecuting attorney, no question would be raised. If the out of state attorney were employed on a contingent fee basis, this would be equivalent to a compromise of the account since the county would not receive all of the money due on the account. We have previously said that the prosecuting attorney could not compromise or settle the account without express approval of the county court, and we likewise hold that a contingent fee arrangement with an out of state attorney cannot be made by the prosecuting attorney. Such an arrangement would have to be made, if at all, by the county court. If the out of state attorney were to be paid a stated fee for the collection of the account, such an arrangement for the payment of the attorney out of county funds would have to be made by the county court, and not by the prosecuting attorney.

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CONCLUSION

It is therefore the opinion of this office as follows:

1. A prosecuting attorney may not compromise and settle an action for the collection of county hospital accounts on his own initiative but must have express approval of any such compromise settlement from the county court.
2. Circuit judges and judges of the magistrate court have authority to require the payment of court costs or a docket fee in advance at the time of filing suit and counties would have to comply with such rule and pay whatever costs or docket fee are required by the rule when filing suit in such court with the exception of that part assessed as the library fee in circuit courts and that part assessed as the six dollar filing fee in magistrate courts.
3. A prosecuting attorney has no authority to forward delinquent county hospital accounts to an out of state attorney for collection. Any such arrangements must be made by the county court.

This opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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