JURY:
DEPOSITS:
COURT COSTS:
MAGISTRATE COURTS:

The magistrate courts, in the absence of express statutory authorization, do not have the authority to, by general rule applicable to all cases, require that a plaintiff make a deposit of $12 when a defendant in a civil case requests a jury trial.

OPINION NO. 56

January 17, 1973

FILED
56

Honorable George E. Murray
Representative, District 90
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Murray:

This opinion is in response to your question in which you ask:

> "Does the Magistrate Court have the right in a pending case where a jury is requested by defendant, subsequent to the filing of the case, to compel the plaintiff to post an additional deposit for Court costs."

You further state that:

> "The Magistrate Courts of St. Louis County require a deposit for costs by way of a filing fee at the time any matter is heard. It has been their custom that when the defendant subsequently would file a request for a jury, that the Court would then order that the plaintiff be compelled to post an additional $12 by way of deposit for jury Court costs which may thereafter be accrued and charged. When questioned concerning this and asked for statutory authority, the various Magistrates could only reply that this has always been done, and they could point to no authority, but stated that they believed it to be within the 'inherent power of the Court'."

The applicable statute is Section 517.630, RSMo, which provides:

> "Before the magistrate shall commence an investigation of the merits of the cause, by an

> examination of the witnesses, or the hearing of any other testimony, either party may demand that the cause be tried by a jury, which jury shall be composed of twelve good and lawful persons having the qualifications of jurors in the circuit court, unless the parties shall agree on a less number, in which case the jury shall consist of the number agreed upon, not less than six; provided, that three-fourths or more of the jurors concurring may return a verdict, which shall have the same force and effect as if rendered by the entire panel. If the verdict be rendered by the entire panel, the foreman alone may sign it, but if rendered by a less number than the entire panel, it shall be signed by all the jurors who agree to it."

We have assumed of course that you are referring to civil cases inasmuch as you refer to the "plaintiff."

We believe that the question is decided by the opinion of the Supreme Court of Missouri in Meadowbrook Country Club v. Davis, 421 S.W.2d 769 (Mo. banc 1967) wherein the court held that in a circuit court proceeding on an appeal from the magistrate court, the circuit court could not by rule condition the defendant's waiver of jury in any mode not prescribed by statute or contrary to the Rules of the Supreme Court. The Supreme Court held the circuit court erred in denying a jury trial where the only reason for the refusal to provide the defendant with a jury was his failure to make a timely written demand and a deposit required under the circuit court rule. That case, of course, applied to the circuit court and the Supreme Court expressly noted that it did not find it necessary to consider the requirement of a deposit separately from the other requirements of the rule; however, it is our view that the holding of that case is applicable in the premises. For similar instances where the courts of appeals have invalidated court rules as conflicting with the statutes and the Supreme Court Rules, see Wade v. Wade, 395 S.W.2d 515 (St.L.Ct.App. 1965) and Commerce Trust Company v. Morgan, 446 S.W.2d 492 (K.C.Ct.App. 1969).

The argument has been advanced that Section 517.160, RSMo, is authority for such a rule. Section 517.160 provides:

> "If the plaintiff is a nonresident of the county, or shall become a nonresident after the commencement of a suit, or if from any cause the magistrate shall be satisfied that he is unable to pay the costs, the magistrate shall

> rule the plaintiff, on or before the day in the rule named, to give security for the payment of costs in such suit; and if the plaintiff fail on or before the day in such rule named to file the obligation of a responsible person of the county whereby he shall bind himself to pay all costs that have or may accrue in such action, or to deposit a sum of money equal to the costs that have accrued and will probably accrue in the same, the magistrate, on motion, shall dismiss the suit unless security is given before the motion is determined."

This office previously rejected this theory in Opinion No. 18 dated February 11, 1948, to Combs, copy enclosed, in which we held that a magistrate cannot require a deposit for costs in excess of that specified by statute in civil proceedings by a general rule of court applicable to all cases. We agree with the holding of that opinion but modify it to the extent that the reference therein to what is now Section 514.020 (then Section 1402, RSMo 1939) should have properly been to Section 517.160. We also enclose Opinion No. 57 dated March 26, 1947, to Marr, which holds that a magistrate court does not have the power to require security in every case for costs in excess of that provided by statute. The magistrate may, of course, require additional security for costs in the precise circumstances permitted by statute.

Under the provisions of Section 517.630, which we have cited, either party may demand a jury and there is no provision that we are able to find which conditions the right to a jury under that section on an additional deposit for jury costs. Further, we find no authority for the magistrate court to prevent the plaintiff from proceeding to trial because of his refusal to deposit such costs when the defendant demands a jury by a rule applicable to all cases.

We do not pass upon the general authority of the magistrate court to promulgate rules. We simply note that in the premises it is our view that the rule in question is invalid.

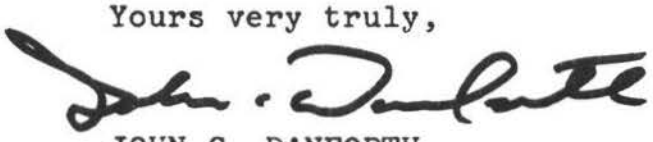
CONCLUSION

It is the opinion of this office that the magistrate courts, in the absence of express statutory authorization, do not have the authority to, by general rule applicable to all cases, require that a plaintiff make a deposit of $12 when a defendant in a civil case requests a jury trial.

Honorable George E. Murray

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 18
2-11-48, Combs

Op. No. 57
3-26-47, Marr