

Clerk, recording judgment/filing fees limitation

Number: INFORMAL

Date: July 12, 2005

The Honorable Kenneth Dasher
Clerk of the Circuit Court
Third Judicial Circuit, Suwannee County
200 South Ohio Avenue
Live Oak, Florida 32060

Dear Mr. Dasher:

You ask whether the filing fees prescribed in section 28.241, Florida Statutes, constitute a limitation on the total fees that may be collected under Chapter 28, Florida Statutes. To illustrate your question, you set forth the filing fee and other fees you presently charge for a dissolution of marriage action which, when added together, exceed the \$250.00 filing fee authorized by section 28.241(1)(a), Florida Statutes.[1] Specifically, you ask whether filing fees allowed by section 28.241, Florida Statutes, include the cost of recording the original judgment pursuant to section 28.29, Florida Statutes.

Section 28.24, Florida Statutes, was amended in 2004, as part of the Legislature's continuing compliance with constitutionally mandated changes to fund the state court system through appropriate filing fees and service charges and costs for performing court-related functions as required by general law.[2] Over the years since the approval of the constitutional amendment requiring an alteration to the funding of the judiciary, the Legislature has made several changes to section 28.24, affecting service charges and filing fees assessed and collected by the clerk of courts.[3]

Section 28.241(1)(a), Florida Statutes, provides:

"The party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a filing fee of up to \$250 in all cases in which there are not more than five defendants and an additional filing fee of up to \$2 for each defendant in excess of five. Of the first \$55 in filing fees, \$50 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, and \$5 must be remitted to the Department of Revenue for deposit into the Department of Financial Services' Administrative Trust Fund to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35. One-third of any filing fees collected by the clerk of the circuit court in excess of \$55 shall be remitted to the Department of Revenue for deposit into the Department of Revenue Clerks of the Court Trust Fund. An additional filing fee of \$4 shall be paid to the clerk. The clerk shall remit \$3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the Department of Financial Services Administrative Trust Fund to fund clerk education. . . . No additional fees, charges, or costs shall be added to the filing fees imposed under this section, except as authorized herein or by general law."

In subsection (4) of the statute, the Legislature has specifically stated:

"The fees prescribed in this section do not include the service charges required by law for the clerk as provided in s. 28.24 or by other sections of the Florida Statutes. Filing fees authorized by this section may not be added to any civil penalty imposed by chapter 316 or chapter 318."

Thus, the plain language of the statute allows the clerk of court to impose service charges authorized in section 28.24, Florida Statutes, and by other sections of the Florida Statutes. Section 28.29, Florida Statutes, speaks to the recording of orders and judgments, providing:

"Orders of dismissal and final judgments of the courts in civil actions shall be recorded in official records. Other orders shall be recorded only on written direction of the court. The direction may be by incorporation in the order of the words "To be recorded" or words to that effect. Failure to record an order or judgment shall not affect its validity. The certified copy of a judgment, required under s. 55.10 to become a lien on real property, shall be recorded only when presented for recording with the statutory service charge."

While section 28.29, Florida Statutes, recognizes that final judgments must be recorded in the official records, it does not prescribe a fee to be charged by the clerk for performing this task. I would note, however, that section 28.24(12), Florida Statutes, authorizes the clerk of the circuit court to charge:

"For recording, indexing, and filing any instrument not more than 14 inches by 8½ inches, including required notice to property appraiser where applicable:

- (a) First page or fraction thereof 5.00
- (b) Each additional page or fraction thereof 4.00
- (c) For indexing instruments recorded in the official records which contain more than four names, per additional name 1.00
- (d) An additional service charge shall be paid to the clerk of the circuit court to be deposited in the Public Records Modernization Trust Fund for each instrument listed in s. 28.222, *except judgments received from the courts* and notices of lis pendens, recorded in the official records:
 - 1. First page 1.00
 - 2. Each additional page 0.50"

* * *

(*emphasis supplied*)

The specific exception of judgments from those instruments for which the clerk may charge the additional service charge for the Records Modernization Trust Fund in section 28.24(12)(d), Florida Statutes, would support the conclusion that judgments are otherwise subject to recording fees authorized by section 28.24, Florida Statutes, since no similar exception is present under the authority to charge a fee for recording instruments.[4] It has been the position of this office that the clerk of court is a ministerial officer whose authority and responsibility are derived from both constitutional and statutory provisions.[5] The clerk, therefore, may impose a fee for providing recording services when statutorily authorized to do so. In this instance, it would appear that the clerk may charge a fee, as authorized by section 28.24(8), Florida Statutes, for

recording a final judgment as directed in section 28.29, Florida Statutes, in addition to the filing fees required by section 28.241, Florida Statutes.

I trust that these informal comments are of assistance to you.

Sincerely,

Joslyn Wilson
Director
Division of Opinions

JW/tls

[1] The fees you have enumerated include an initial filing fee of \$195.00, a record search fee of \$21.00, a preparation fee of \$6.00, a recording of judgment fee of \$5.99, a recording fee of \$37.00, a collection for the modernization trust fund of \$5.00, fees to the board of county commissioners, the Department of Revenue and the Clerk of the Circuit Court.

[2] See s. 14, Art. V, State Const., Amendment proposed by Constitution Revision No. 7, 1998, filed with the Secretary of State May 5, 1998; adopted 1998. Section 16, Ch. 2004-265, Laws of Fla.

[3] See s. 2, Ch. 2000-144; s. 90, Ch. 2003-261; s. 28, Ch. 2003-402; and s. 16, Ch. 2004-265, Laws of Fla.

[4] See *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952) (where a statute sets forth exceptions, no others may be inferred to be intended); *Florida Legal Services, Inc. v. State*, 381 So. 2d 1120 (Fla. 1st DCA. 1979) (where Legislature creates specific exceptions to language in statutes, the rule "expressio unius est exclusio alterius" may be applied to infer that had Legislature intended to establish other exceptions it would have done so clearly and unequivocally). Cf. *City of St. Petersburg v. Siebold*, 48 So. 2d 291 (Fla. 1950).

[5] See Ops. Att'y Gen. Fla. 79-70 (1979); 86-38 (1986); and 97-67 (1997). See also *Alachua County v. Powers*, 351 So. 2d 32, 35 (Fla. 1977).