Filing fee for notice of appeal from circuit court

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Subject:
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CIRCUIT COURT CLERK--FILING FEE FOR NOTICE OF APPEAL FROM CIRCUIT COURT

To: Margaret T. Scott, Clerk, Circuit Court, Naples

Prepared by: Jerald S. Price, Assistant Attorney General

QUESTION:

What is the proper service charge to be paid to the circuit court clerk pursuant to s. 28.241(3), F. S., upon the filing of a notice of appeal from circuit court to a higher court?

SUMMARY:

The service charge required by s. 28.241(3), F. S., to be paid to a circuit court clerk upon the filing of a notice of appeal from circuit court to a higher court is five dollars. The fifteen dollar service charge provided for in s. 28.241(3) is required to be paid to a circuit court clerk only upon the filing of a notice of appeal to the circuit court from a lower court.

Section 28.241(3), F. S., provides:

"(3) Upon the institution of any appellate proceedings from any inferior court to the circuit court of any such county, or from the circuit court to an appellate court of the state, the clerk shall charge and collect from the party or parties instituting such appellate proceedings, a service charge of $15 for filing a notice of appeal from an inferior court and *$5 for filing a notice of appeal to a higher court*." (Emphasis supplied.)

It seems obvious from a careful reading of subsection (3), *supra*, as a whole, that the subsection provides for two alternative service charges to be paid to the circuit court clerk -- one of fifteen dollars when an appeal is taken to the circuit court from a lower court, and one of five dollars when an appeal is taken to the district court of appeal or the Supreme Court from the circuit court. Since any appeal must be either from a lower court to the circuit court, or from the circuit court to a higher court, a circuit court clerk is entitled to only one of the two service charges -- either fifteen dollars or five dollars -- for the filing of any single notice of appeal.

You mentioned in your letter that Collier County has provided by special act for the imposition of additional charges in civil cases for the funding of the Collier County law library, pursuant to authorization for such additional charges in s. 28.241(1), F. S. I can find no authority for the imposition of law library service charges when a notice of appeal is filed. The authorizing

statement in subsection 28.241(1) is limited to that subsection alone by virtue of the wording, *i.e.* , "[s]ervice charges in excess of those *herein fixed* may be imposed." (Emphasis supplied.) The word "herein" refers only to subsection (1) of s. 28.241 and should not be taken as authorization for the addition of a law library charge to any of the other charges authorized in the various subsections of s. 28.241. This interpretation of the term herein is reinforced by the fact that specific authorization for the addition of law library service charges is also provided in subsection (2), relating to criminal cases, but no such specific authorization appears in subsection (3), relating to appeals. It seems apparent that if the term herein in subsection (1) had been intended by the legislature to refer to all service charges under s. 28.241, there would have been no reason for the specific authorization in subsection (2).

Thus, the total service charge to be imposed by a circuit court clerk for filing a notice of appeal is either fifteen dollars if the appeal is from a lower court to the circuit court, or five dollars if the appeal is from the circuit court to a higher court.