

ACTS, 1980. - Chap. 539.

Chap. 539. AN ACT TO INCREASE THE FEES CHARGED BY THE COURTS OF THE COMMONWEALTH AND TO MAKE UNIFORM THE PROCEDURE FOR INDIGENTS TO OBTAIN WAIVERS OF SUCH FEES.

Be it enacted, etc., as follows:

SECTION 1. Chapter 185C of the General Laws is hereby amended by striking out section 19, as inserted by section 92 of chapter 478 of the acts of 1978, and inserting in place thereof the following section:-

Section 19. Proceedings shall be commenced in the housing court department as follows: a criminal case by complaint in like manner as in the district court department, a civil action in accordance with the Massachusetts Rules of Civil Procedure; provided, however, that a summary process action and a small claims action shall be commenced and administered in accordance with rules promulgated with the approval of the supreme judicial court. Clerks of the housing court department shall charge a fee of twenty-five dollars for the entry of an action, which shall be paid by the party entering the same; and no other fee shall be charged for taxing costs, for issuing any subpoena or execution or for issuing any order of notice or other mesne, interlocutory or final order, rule, decree of process authorized by law, except a temporary restraining order or preliminary injunction for the issuance of which the clerk shall charge twenty-five dollars; provided, however, that no fee for the entry of an action or for the issuance of a temporary restraining order or preliminary injunction shall be charged to the commonwealth or political subdivision thereof.

Notwithstanding that a proceeding under this chapter is commenced by complaint, if it is found that the offense charged was not willful, intentional, reckless or repeated, the proceeding shall not be deemed criminal and no record of the case shall be entered in the probation records.

SECTION 2. Section 22 of chapter 218 of the General Laws, as most recently amended by section 186 of chapter 478 of the acts of 1978, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

The procedure shall include the beginning of actions with an entry fee of five dollars for claims of five hundred dollars or less and seven dollars and fifty cents for claims of greater than five hundred dollars, plus the costs of registered mail notice, but without summons and complaint and without requirement, except by special order of court, of any pleading other than a statement to the clerk or an assistant clerk, who shall reduce the same to concise written form in a docket kept for the purpose.

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SECTION 3. Chapter 221 of the General Laws is hereby amended by striking out section 37, as most recently amended by section 73 of chapter 925 of the acts of 1972, and inserting in place thereof the following section:-

Section 37. A citizen of the United States, if over eighteen, may file a petition in the supreme judicial court or superior court to be examined for admission as an attorney at law. Unless the court otherwise orders, the clerk of such court shall refer the petition to the board of bar examiners to ascertain his acquirements and qualifications. If the board reports that the petitioner is of good moral character and sufficient acquirements and qualifications and recommends his admission, he shall be admitted unless the court otherwise determines, and thereafter may practice in all the courts of the commonwealth. A petitioner to be examined for admission shall pay to the clerk of the court in which his petition is filed a fee of one hundred dollars upon the entry of his petition and a further fee of one hundred dollars upon the entry of any subsequent petition. A member of the bar of any other state who applies to be admitted without examination shall pay to the clerk of the court in which his petition is filed a fee of three hundred dollars. Such fees shall be paid over to the commonwealth.

SECTION 4. Chapter 231 of the General Laws, as appearing in section 263 of chapter 478 of the acts of 1978, is hereby amended by striking out section 104 and inserting in place thereof the following section:-

Section 104. Any other party, a plaintiff against whom a claim, counterclaim, or cross-claim is brought, and a defendant who asserts a compulsory counterclaim, may, provided that the amount of the claim against such other party, the amount of the claim, counterclaim or cross-claim brought against such plaintiff, or the amount of the compulsory counterclaim asserted by such defendant, as the case may be, exceeds seven thousand five hundred dollars, file in the district court in which the action is pending a claim of trial by the superior court together with the fee for the entry of the claim of each plaintiff in the superior court, and, except as provided in section one hundred and seven, a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the party or parties not asserting such claim of trial by the superior court or by the clerk or an assistant clerk of said district court, payable to the other party or parties, conditioned to satisfy any judgment for costs which may be entered against him in the superior court in said cause within thirty days after the entry thereof. Such claim of trial by the superior court must be filed no later than twenty-five days after service of the pleading which asserts the claim, counterclaim, or cross-claim on which the right to remove is based; provided, however, that in the case of a

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compulsory counterclaim, the party asserting such counterclaim must file such claim of trial by the superior court no later than five days after the expiration of the time allowed to assert such counterclaim. The clerk shall forthwith transmit the papers and entry fee to the clerk of the superior court and the same shall proceed as though then originally entered there.

Removal of a case under this section shall remove any default and vacate any judgment entered thereon for failure to plead or otherwise defend in the district court, excepting cases in which the ad damnum does not exceed seven thousand five hundred dollars. Cases in which no claims, counterclaims and cross-claims exceed seven thousand five hundred dollars and those in which rights of parties to remove for trial in the superior court as hereinabove provided are not properly exercised shall be tried in the district court. A party who would have been entitled to remove the case for trial in the superior court as herein above provided but for the fact that the amount of the claim, counterclaim, or cross-claim, as the case may be, does not exceed seven thousand five hundred dollars shall, if he desires trial by the superior court, file an entry fee of fifty dollars and bond within ten days after notice of the decision or finding. Such filing shall have the same effect as a request for retransfer under section one hundred and two C, and the decision shall be transmitted to and the case tried in the superior court subject to the provisions of said section one hundred and two C applicable to retransferred cases.

SECTION 5. Chapter 261 of the General Laws is hereby amended by striking out section 27A, as inserted by section 3 of chapter 694 of the acts of 1974, and inserting in place thereof the following section:-

Section 27A. As used in sections twenty-seven A to twenty-seven G, inclusive, the following words shall have the following meanings:

"Indigent", (a) a person who receives public assistance under the Massachusetts Aid to Families with Dependent Children, General Relief or Veteran's Benefits programs or receives assistance under Title XVI of the Social Security Act, or the Medicaid Program, 42 USC 1396, et seq., or (b) a person whose income, after taxes, is one hundred twenty-five per cent or less of the current poverty threshold annually established by the Community Services Administration pursuant to section six hundred twenty-five of the Economic Opportunity Act, as amended, or (c) a person who is unable to pay the fees and costs of the proceeding in which he is involved, or is unable to do so without depriving himself or his dependents of the necessities of life, including food, shelter and clothing.

"Fees and costs", fees and costs shall not include attorneys' fees.

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"Normal fees and costs", the fees and costs a party normally is required to pay in order to prosecute or defend the particular type of proceeding in which he is involved. They shall include, but not be limited to, the following: in all civil cases, filing or entry fees, and fees and related costs for service of process, including publication of a citation when publication is ordered; fees and costs for the issuance or service of a subpoena and witness fees for trial or deposition; jury trial fees; removal fees; costs assessed in a bill of costs; in equity, fees for the issuance of an injunction, restraining order, writ or other process; in the probate and family court department, fees for an amendment of record.

"Extra fees and costs", the fees and costs, in addition to those a party is normally required to pay in order to prosecute or defend his case, which result when a party employs or responds to a procedure not necessarily required in the particular type of proceeding in which he is involved. They shall include, but not necessarily be limited to, the cost of transcribing a deposition, expert assistance and appeal bonds and appeal bond premiums.

"Clerk", the clerk or an assistant clerk or the register or an assistant register.

SECTION 6. Said chapter 261 is hereby amended by striking out section 27B, as amended by section 15 of chapter 344 of the acts of 1979, and inserting in place thereof the following section:-

Section 27B. Upon or after commencing or answering to any civil, criminal or juvenile proceeding or appeal in any court, including but not limited to civil actions, proceedings for divorce or separate support, summary and supplementary processes, and proceedings upon petitions to vacate, for review or, upon appeal in a criminal case, any party may file with the clerk an affidavit of indigency and request for waiver, substitution or payment by the commonwealth of fees and costs upon a form prescribed by the chief justice of the supreme judicial court and in accordance with the standards set forth in sections twenty-seven C to twenty-seven F, inclusive, and sworn to under oath by the affiant.

An indigent party may subsequently file one or more supplementary affidavits requesting the waiver, substitution or payment by the commonwealth of fees and costs not previously granted at any time while the case is still pending in the original court or elsewhere.

SECTION 7. Said chapter 261 is hereby further amended by striking out section 27C, as amended by section 269 of chapter 478 of the acts of 1978, and inserting in place thereof the following section:-

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Section 27C. (1) If the affidavit is filed with the complaint or other paper initiating the proceeding, the clerk shall receive the complaint or other paper for filing and proceed as if all regular filing fees had been paid. Such filing shall be conditional until either (a) the affidavit is granted or (b) if the affidavit is denied, the payment of necessary and regular filing fees is made within five days of the denial of the affidavit, or such further time as the court may allow, or within five days of the denial of any appeal relating to the affidavit, whichever is later.

(2) If the affidavit appears regular and complete on its face and indicates that the affiant is indigent, as defined in section twenty-seven A, and requests a waiver, substitution or payment by the commonwealth, of normal fees and costs, the clerk shall grant such request forthwith without hearing and without the necessity of appearance of any party or counsel.

(3) If the affidavit does not appear to satisfy the condition of paragraph (2), the clerk or register shall forthwith bring the affidavit to the attention of the justice or judge, as the case may be. The justice or judge may grant such request forthwith or may have the clerk or register notify the affiant that a hearing will be held on the affidavit within five days. If it appears at the hearing that there is a serious question as to the affiant's indigency, as defined in section twenty-seven A, then before making a finding of indigency, the court shall consider the following facts with respect to the applicant as of the time of hearing, in the immediate past and with respect to the immediate future; his age, education, training, physical and mental ability and number of dependents; gross and net income; regular and extraordinary expense, if any; assets and liabilities; whether or not he is a recipient of public assistance and for what purposes; and any other facts which are relevant to the applicant's ability to pay court costs.

(4) If the court makes a finding of indigency, it shall not deny any request with respect to normal fees and costs, and it shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary to assure the applicant as effective a prosecution, defense or appeal as he would have if he were financially able to pay. The court shall not deny any request without first holding a hearing thereon; and if there is an appeal pursuant to section twenty-seven D following a denial, the court shall, within three days, set forth its written findings and reasons justifying such denial, which document shall be part of the record on appeal.

(5) The clerk of each court shall conspicuously post in the part of his office open to the public a notice informing the public in plain language of the availability of waiver, substitution or payment by the commonwealth of fees and costs for indigent persons.

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Notwithstanding that a proceeding under this chapter is commenced by complaint, if it is found that the offense charged was not willful, intentional, reckless or repeated, the proceeding shall not be deemed criminal and no record of the case shall be entered in the probation records.

SECTION 2. Section 22 of chapter 218 of the General Laws, as most recently amended by section 186 of chapter 478 of the acts of 1978, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

The procedure shall include the beginning of actions with an entry fee of five dollars for claims of five hundred dollars or less and seven dollars and fifty cents for claims of greater than five hundred dollars, plus the costs of registered mail notice, but without summons and complaint and without requirement, except by special order of court, of any pleading other than a statement to the clerk or an assistant clerk, who shall reduce the same to concise written form in a docket kept for the purpose.

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SECTION 8. Said chapter 261 is hereby further amended by striking out section 27D, as amended by section 269 of chapter 478 of the acts of 1978, and inserting in place thereof the following section:-

Section 27D. In any case where the court denies a request for waiver, substitution or payment by the commonwealth of fees and costs, pursuant to section twenty-seven C or any other provision of law, the applicant may take an appeal as hereinafter provided. If the matter arises in the superior, the land, the probate or the housing court departments, the appeal shall be to a single justice of the appeals court at the next sitting thereof; and if the matter arises in the district, municipal, or juvenile court departments, the appeal shall be to the superior court then sitting in the same county, if any, or if not, to the superior court sitting in the nearest county or in Suffolk county. Upon being notified of the denial the applicant shall also be advised of his right of appeal, and he shall have seven days thereafter to file a notice of appeal with the clerk or register. Upon receipt of notice of appeal timely filed the clerk or register shall forthwith notify the judge or justice, who shall with three days set forth his written findings and reasons as provided in paragraph (4) of section twenty-seven C. The clerk or register shall then forward the affidavit and request, the court's findings and reasons for denial and any other documents on file relevant to the appeal, to the clerk of the court hearing the appeal, who, upon receipt thereof, shall set the matter down for speedy hearing and send notice to the applicant. The court denying the request may, with or without motion, stay proceedings pending appeal or issue any other order or process to preserve the rights of the parties pending the appeal. The court hearing the appeal may enter or revoke such a stay or other order, and its decision shall be final with respect to such request.

SECTION 9. Section 27G of said chapter 261, as amended by section 269 of chapter 478 of the acts of 1978, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

The clerk shall receive from any indigent party or his attorney all bills and vouchers for any document, service or object rendered to said party for which an order for payment by the commonwealth has been issued, and shall transmit said bills and vouchers and an attested copy of said order to the state treasurer, who shall make prompt payment thereon.

SECTION 10. Chapter 262 of the General Laws is hereby amended by striking out section 2, as most recently amended by section 1 of chapter 858 of the acts of 1971, and inserting in place thereof the following section:-

Section 2. The fees of the clerks of the district and Boston municipal court departments of the trial court in civil actions, shall be as follows:-

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For the entry of a complaint, petition or other action, twenty-five dollars.

For the entry of supplementary proceedings under chapter two hundred and twenty-four, ten dollars, which, together with the fees of witnesses and officers in such proceedings, shall be allowed the creditor as costs.

For the entry of a claim of trial by the superior court under section one hundred and four of chapter two hundred and thirty-one, twenty-five dollars.

For approving or disapproving by the court of sureties on bonds or recognizances, except bonds given for removal of actions to the superior court, fifteen dollars.

For the entry of a civil appeal in the appellate division of the district court department, twenty-five dollars.

Notwithstanding the foregoing, for the entry of a complaint, petition, appeal or other action or removal from the district court by the commonwealth no fee shall be paid; but, if the commonwealth prevails in the action, the fees shall be taxed against the other party.

SECTION 11. Said chapter 262 is hereby further amended by striking out section 4, as most recently amended by section 163 of chapter 377 of the acts of 1975, and inserting in place thereof, the following three sections:-

Section 4. The fees of the clerks of the supreme judicial court for the commonwealth and for each of the counties and for the appeals court shall be as follows:

For the entry of a complaint, petition, appeal or other action, seventy-five dollars.

For the filing of an application for further appellate review, one hundred dollars.

For the issuance of an injunction or restraining order, twenty-five dollars.

Notwithstanding the foregoing, for the entry of an appeal, petition, complaint or other action and for the filing of an application for further appellate review by the commonwealth, no fee shall be paid and no fee shall be charged to the commonwealth for the issuance of an injunction or restraining order; but if the commonwealth prevails in the action, the fees shall be taxed against the other party.

Section 4A. The fees of clerks of courts of the superior court department of the trial court shall be as follows:-

For the entry in the superior court department of the trial court of a complaint, petition or other action and for the filing of a petition to the county commissioners, fifty dollars, except that no fee shall be required from a municipality filing a petition to the county commissioners for the county in which it is located.

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For issuance of an injunction or restraining order, twenty-five dollars.

Notwithstanding the foregoing, for the entry of a complaint, petition or other action by the commonwealth, no fee shall be paid and no fee shall be charged to the commonwealth for the issuance of an injunction or restraining order; but, if the commonwealth prevails in the action, the fees shall be taxed against the other party.

Section 4B. The chief administrative justice of the trial court, shall, subject to the approval of the supreme judicial court, establish and periodically revise a uniform schedule of fees to be charged by the various departments of the trial court for court documents and services which shall include, but not be limited to, certificates of orders, decrees, rulings, judgments, attested and unattested copies of court documents, records, blank writs and summons, subpoenas, writs of habeas corpus, for other forms, for approving or disapproving sureties on bonds or recognizances, for tape cassette recordings of proceedings in the trial court department, for commissions to take depositions, and for waivers of notice of marriage.

SECTION 12. Said chapter 262 is hereby further amended by striking out section 39, as most recently amended by chapter 1105 of the acts of 1973, and inserting in place thereof the following section:-

Section 39. The fees payable under chapter one hundred and eighty-five shall be as follows:

For the entry of every original petition or writ and transmitting it to the recorder, when filed with an assistant recorder, twenty-five dollars.

For every plan filed in an original proceeding, twenty-five dollars, and for every new plan filed after original registration, or for making a new plan filed under an original registration, or for making a new plan on request of a registered owner, fifteen dollars plus three dollars for each lot shown on said plan. The filing fee in the registry of deeds upon receipt from the recorder of the land court department of a plan or copy of a plan shall be ten dollars.

For indexing an instrument recorded while a petition for registration is pending, five dollars.

For examining title, on a petition to register land, or on a petition to register easements or rights in land, the actual amount charged or allowed therefor to the examiner by the court.

For each notice by mail, three dollars plus the actual cost of printing.

For all services by a sheriff or deputy sheriff under provi-

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sions of chapter one hundred and eighty-five, the same fees as are provided by law for like services.

For each notice by publication, three dollars plus actual cost of publication.

For entry of an order dismissing a petition for registration of title, or for foreclosure of a tax title, or a decree of foreclosure of a tax title or of redemption, and sending a memorandum to the assistant recorder, ten dollars.

For entry of a decree of registration and sending a memorandum to the assistant recorder, three-eighths of one per cent of the assessed value of the property registered, on the basis of the last assessment for municipal taxation, in addition to any sum payable under section ninety-nine of chapter one hundred and eighty-five, but in no one proceeding shall the amount payable under this paragraph be less than fifty nor more than two thousand dollars.

For the entry of an original certificate of title, including issue of one duplicate, twenty-five dollars.

For the entry of a new certificate of title, including issue of one duplicate, twenty-five dollars.

For filing and registering an adverse claim, twenty dollars.

For filing a sewer assessment, twenty dollars for each document and three dollars for each additional certificate affected.

For filing and registering a mortgage, fifteen dollars.

For entering statement of change of residence or post office address, including endorsing and attesting it on a duplicate certificate, ten dollars.

For entering any note in the entry book or in the registration book, ten dollars.

For every petition after the original registration, twenty-five dollars.

For a certified copy of any decree or registered instrument, the same fees as are provided for registers of deeds.

For the registration of all other instruments, whether single or in duplicate or triplicate, including entering, indexing and filing it and attesting the registration thereof, and also making and attesting a copy of memorandum on one instrument or a duplicate certificate when required, except as otherwise provided, twenty dollars, and twenty dollars for the making and attesting of a copy of memorandum on each additional certificate and duplicate. For noting the registration of any instrument on each other certificate and duplicate in addition to the first certificate duplicate, twenty dollars.

SECTION 13. Said chapter 262 is hereby amended by striking out section 40, as most recently amended by section 135 of chapter 684 of the acts of 1972, and inserting in place thereof the following section:-

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Section 40. The fees of registers of the probate and family court department of the trial court, shall be as follows:

For the entry of a complaint for divorce or for affirming or annulling marriage, except as provided hereinafter for an action in equity, fifty dollars.

For the entry of an action for separate support, twenty-five dollars.

For the entry of a petition for the probate of a will, for administration on the estate of a person deceased intestate, of a petition for administration of goods not already administered, with the will annexed or otherwise, of a petition under section thirty-five or thirty-six of chapter two hundred and nine by a husband or wife for authority to convey land as if sole, of a petition for partition, of a petition for change of name, of a petition for leave to carry on the business of the deceased, and for filing a representation of insolvency and for the entry of a petition for the appointment of a special administrator, conservator, trustee, receiver of the estate of an absentee, or of a guardian except when the petitioner certifies that the ward's estate does not exceed one hundred dollars, twenty-five dollars.

For the entry of a petition for the sale of real or personal estate including sales of real estate subject to vested or contingent remainders and petitions for sale of real estate or removal or a petition for leave to lease real estate, of a petition for specific performance, of a petition for leave to mortgage real estate, of a petition in equity except such as relates to separate support, adoption, or the custody or support of minors, of a petition for release of dower or curtesy, of a petition for letters to a foreign guardian, of a petition for leave to compromise, and of a petition for leave to pay debts, except when the petitioner or accountant certifies that the estate does not exceed one thousand dollars in value, twenty-five dollars.

For the entry of a general petition except such as relates to adoption, or custody or support of minors, twenty-five dollars.

For the entry of petitions for the removal of a fiduciary, for amendment of record except such as relates to separate support, adoption, or the custody or support of minors, for discharge of surety, for new bond, for care of burial lot, for erection of a monument and for new inventory, fifteen dollars each.

For a certificate by the judge of a probate court to accompany notice of intention to marry of a divorced person, as provided by section twenty-two of chapter two hundred and seven, fifteen dollars.

For filing a statement of voluntary administration, fifteen dollars.

For the petition or application for allowance of an account