

CIRCUIT COURTS:
SUPPORT OF DEPENDENTS:
UNIFORM LAW:

A person proceeding under the Uniform Support of Dependents Law would be required to file security for costs or a deposit if a nonresident, and would be subject to the rules of the circuit court in regard to costs where a resident.

November 21, 1952



Honorable Phelim O'Toole
Clerk of the Circuit Court
Civil Courts Building
St. Louis, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office which request reads in part as follows:

"Chapter 454 - Uniform Support of Dependents Law.

"We have received about twenty petitions from about ten different states under reciprocal support of dependents laws.

"We have four or five local attorneys who want to file petitions in this Court under Chapter 454. The question of costs seems to be the 'fly in the ointment.' Our Judges in General Term suggested that in either case, that is, where Missouri is the initiating or the responding state, that a deposit of costs should be made in the amount of \$14.00.

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"There is nothing mentioned in our law about the matter of costs. We do not think that we have the authority, under our Statutes, to accept these petitions either as the initiating or as the responding state, without a deposit for costs.

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"We would like to have an opinion from you on this question, at your convenience. At the present time, we do not know how to proceed."

The Uniform Support of Dependents Law (Chapter 454, RSMo 1949), is a reciprocal law providing a method of enforcing the duty of support in cases where the obligor is not present and within the jurisdiction of the courts of the state where the duty arose. Said law is rather lengthy and we do not deem it necessary for the purpose of this opinion to set it forth in its entirety.

Section 454.090, RSMo 1949, provides for the commencement of an action for support by the filing of a petition as follows:

"All duties of support are enforceable by an action commenced by the filing of a petition irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in circuit court."

Section 454.110, RSMo 1949, provides that if the court acting upon said petition finds that it sets forth facts from which it may be determined that the obligor owes a duty of support and that the court of the responding state may obtain jurisdiction of the obligor or his property, it shall also certify to the responding state as follows:

"If the court of this state acting upon a petition filed therein by this state as an initiating state finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and shall cause certified copies of the petition, the certificate and an authenticated copy of this chapter to be transmitted to the court of the responding state."

Taking first your question where the action was commenced in another state and the obligor is present or has property in this state, we refer you to Section 514.010 which provides as follows:

"In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators or guardians, qui

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tam actions, actions on penal statutes when the penalty is given to the informer, and in all civil cases when the plaintiff or person for whose use the action is to be commenced shall not be a resident of this state, the plaintiff or person for whose use the action is to be commenced shall, before he institutes such suit, file with the clerk of the court in which the action is to be commenced the written undertaking of some person, being a resident of this state, whereby he shall acknowledge himself bound to pay all costs which may accrue in such action; and if any such action shall be commenced without filing such undertaking, or depositing with the clerk of the court in which said suit is brought, a sum of money sufficient to pay all costs that may accrue in the case, subject to be increased at any time, whenever the court may deem proper, and by its order of record require, the court, on motion, may dismiss the same, unless such undertaking be filed or sum of money be deposited before the motion is determined, and the attorney of the plaintiff shall be ruled to pay all costs accruing therein."

The action provided in Chapter 454 to be commenced by the filing of a petition as outlined above and as distinguished from the provisions of said chapter relating to extradition is a civil proceeding and of course, in such a case as here considered, the proceeding instituted in the courts of this state is one in which the plaintiff is a nonresident and we are of the opinion that under the above provision, security for costs or a deposit would be required, except in cases where the plaintiff should be allowed to sue as a pauper as provided in Section 514.040.

We turn now to your other question where Missouri is the initiating, rather than the responding state. We assume that the deposit for costs in the amount of \$14.00 to which you have referred, is authorized and in conformity with rules of the circuit court. It is well established that courts have inherent power to make rules of practice to regulate their proceedings in the administration of justice. The rule is stated in the case of State v. Miller, 241 S.W. 920, as follows:

"It is beyond question that courts have an inherent power to prescribe rules of practice to regulate their proceedings in the administration of justice."

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Section 478.397, RSMo 1949, gives to the Circuit Court of the City of St. Louis certain rule making power as follows:

"And in addition to the ordinary power of making rules conferred by the general law, the court may make all rules which its peculiar organization may, in its judgment, require, different from the ordinary course of practice, and necessary to facilitate the transaction of business therein. But all rules for the government of the court at special term shall be the same before each of the judges at such term."

Under the foregoing, we are of the opinion that a person initiating an action for support in the courts of this state as provided by Section 454.090, supra, would be required to make a deposit for costs in such amount as is prescribed by the rules of the court. We do not undertake to pass upon the validity of such a rule or the amount of deposit required by such rule.

CONCLUSION

Therefore, it is the opinion of this office that under the civil proceeding authorized by the Uniform Support of Dependents Law, a person or persons using the courts of this state as the responding state in an action commenced by the filing of a petition, would be required to file a security or deposit for costs as required by Section 514.010, RSMo 1949, since the person in whose name the action is commenced or for whom it is commenced would be a nonresident.

We are further of the opinion that when an action for support is commenced in this state as the initiating state, the person initiating the action would be subject to any rules of court not inconsistent with existing statutes and not arbitrary, discriminatory or unreasonable requiring a deposit for costs.

Respectfully submitted,

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APPROVED:



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