

MAGISTRATE COURT: Magistrate cannot require deposit for costs in all civil proceedings.

FILED
18

February 11, 1948

2/17

Honorable J. A. Combs
Judge of the Magistrate Court
Madison County
Fredericktown, Missouri

Dear Judge Combs:

This is in reply to your letter of recent date requesting an opinion from this department on the following set of facts:

"During the past year we have found that, in civil cases filed in the Magistrate Court, it is sometimes very difficult to collect fees due the Sheriff when the Magistrate filing fee of \$5.00 only is paid by the plaintiff at the beginning of a suit. We are wondering whether it would be lawful and proper for a Magistrate Judge to rule in his court that the sum of \$10.00 be deposited by the plaintiff at the beginning of every civil suit, to cover both the filing fee and the Sheriff's fees, any amount remaining above these initial costs to be returned to the plaintiff by the clerk of the Magistrate Court."

The question presented is, in effect, whether the judge of the magistrate court can make a ruling of court requiring the plaintiff to make a cash deposit at the time of filing a civil proceeding in the magistrate court in a sum sufficient to cover the anticipated court costs.

At the outset, it will be well to point out that courts have an inherent power to prescribe rules of practice to regulate their proceedings in the administration of justice. Such rules of court must be adhered to both by the parties litigant and the court, in all cases which fall within them, so long as

they remain in force. State ex rel. Brockman Mfg. Co. v. Miller, 241 S.W. 920; Brooks v. Boswell, 34 Mo. 474; State ex rel. Pedigo v. Robertson, 181 S.W. 987. However, such rules must be reasonable and in harmony with the law. A rule which conflicts with or stretches a statute does not legalize any action under it and should not be enforced so far as it contradicts or goes beyond the statute. In the case of National Refrigerator Co. v. Southwest Missouri Light Company, 231 S.W. 930, the court said at page 934:

" * * * Of course, the law must be followed regardless of the rule; in other words, the rule cannot repeal the provisions of the statute regarding any matter. For instance, the statutes specify what matters shall be preserved by the record proper, and what matters must be preserved by bill of exceptions, which statutes must be complied with regardless of the rule. If a matter required by the statute to be preserved in the record proper should, as a matter of fact, be preserved in the bill of exceptions only, or vice versa, that error would not be cured by the rule, and the opposite party could by his motion call the attention of the court to the fact that the matter was not in fact properly preserved in the proper legal container. * * *"

See also State v. Cockrell, 217 S.W. 524; Colhoun et al. v. Crawford, et al., 50 Mo. 458; Purcell v. Hannibal & St. Joseph Railroad Co., 50 Mo. 504; State ex rel. Brockman Mfg. Co. v. Miller, supra.

The Laws of Missouri of 1947, Volume 2, page 240, Section 23, provide that a fee of \$5.00 shall be allowed the magistrate in each civil proceeding instituted in his court. By certain express exceptions, said fee must be paid by the plaintiff upon the commencement of any such proceedings and will be charged against the losing party, the same to be repaid to the plaintiff if he is successful. This deposit of the amount of the magistrate fee is the only such deposit provided for in the magistrate law and is not actually a deposit for costs as contemplated by the question under consideration.

With regard to deposits for costs, we direct your attention to Section 1402, R.S. Mo. 1939, which allows the court to require deposits for costs under certain circumstances. Said section reads as follows:

"If, at any time after the commencement of any suit by a resident of this state, he shall become non-resident, or in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, the court shall, on motion of the defendant or any officer of the court, rule the plaintiff, on or before the day in such rule named, to give security for the payment of the costs in such suit; and if such plaintiff shall fail, on or before the day in such rule named, to file the undertaking of some responsible person, being a resident of this state, whereby he shall bind himself to pay all costs which have accrued or may accrue in such action, or deposit with the clerk of the court in which said suit is pending a sum of money sufficient to pay all costs that have accrued or will probably accrue in the case, subject to be increased at any time whenever the court may deem proper and by its order require, the court may, on motion, dismiss the suit unless such undertaking shall be filed or sum of money be deposited before the motion is determined."

The above section provides that if in any civil case the court believes the plaintiff is unable to pay the cost of the suit, or is so unsettled as to endanger the officers of the court with respect to their legal demands, the court shall, on motion of the defendant or any officer of the court, require the plaintiff to either file the undertaking of some person who will bind himself to pay all costs or deposit with the clerk of the court a sum of money sufficient to pay all costs which have accrued or which may accrue in such action. We believe that this statute, in expressly setting out the circumstances under which deposits for costs may be required

and the procedure which the court must follow in so requiring such deposits for costs, is restrictive. It will be well to point out that deposits for costs are statutory in nature. Under the authority of the above-cited cases the court may not prescribe a rule of court which will exceed or conflict with the terms of this statute, that is to say, a rule which will permit the court to require deposits for costs in every civil proceeding filed in the magistrate court.

Conclusion.

In the premises, it is the opinion of this department that the judge of the magistrate court may not prescribe a rule of court which will require deposits for costs in every civil proceeding instituted in the magistrate court.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

DD:ml

APPROVED:



J. E. TAYLOR
Attorney General