

The State of South Carolina



Office of the Attorney General

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April 25, 1988

The Honorable Timothy F. Rogers
Member, House of Representatives
530-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Rogers:

You have outlined a proposal whereby a party filing a lawsuit to obtain a divorce would pay a higher filing fee than other parties who would file lawsuits for other causes of action. The proceeds of the additional fee would be used to fund programs dealing with domestic violence. You have requested the opinion of this Office as to the constitutionality of such a proposal.

If such a proposal should be adopted by the General Assembly, it should be noted that in considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional. We must advise, however, that we believe the proposal which you have outlined would be determined to be constitutional.

Section 8-21-310 of the Code of Laws of South Carolina (1976, as revised) sets forth a schedule of fees and costs to be collected by clerks of courts and registers of mesne conveyances. Subsection (11) provides in relevant part:

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(a) For filing first complaint or petition, including application for a remedial and prerogative writ and bond on attachment or other bond, in a civil action or proceeding, in a court of record, twenty-five dollars. There may be no further fee for filing an amended or supplemental complaint or petition, nor for filing any other paper in the same action or proceeding. An original application for postconviction relief may be filed without fee upon permission of the court to which such application is addressed. There may be no further fee for entering and filing any verdict, judgment, final decree or order of dismissal and enrolling a judgment thereon, for signing, sealing, and issuance of execution, for entering satisfaction or partial satisfaction on a judgment [.]

An exception to the statutorily-required filing fee, for petitioners in postconviction relief actions, is contained in this Code sub-section. By amending Section 8-21-310(11), it would be possible to create an exception to accommodate your proposal.

Researching your issue, we were able to locate one court decision in which a higher fee for divorce actions was upheld, having been challenged on the basis of equal protection. In Murillo v. Bambrick, 681 F.2d 898 (3d Cir. 1982), cert. den. 459 U.S. 1017, the State of New Jersey, by statute, required a sixty (\$60.00) dollar filing fee of all complainants in Superior Court. In addition, divorce actions in that court were not listed for trial, even if uncontested, until an additional fifty (\$50.00) dollar fee had been paid. If the divorce action were contested, an additional ten (\$10.00) dollar fee for stenographic services was to be paid. The additional fees were challenged as violative of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

The district court, in a decision reported at 508 F.Supp. 830 (D.N.J. 1981), found the higher fee to be unconstitutional. The Third Circuit disagreed and reversed the ruling of the lower court. Applying the "rational relation" standard for equal protection review, the court identified the rational reason for the higher fee as being the need for reimbursement of a portion of expenses incurred by the State of New Jersey in providing divorce-related services. Copies of both court decisions are enclosed for your review.

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Applying the reasoning of the Third Circuit to a higher fee for filing divorce actions in this State, such fee could be upheld against a similar constitutional challenge as long as the enabling legislation "class[ifies] the persons it affects in a manner rationally related to legitimate governmental objectives." Murillo, 681 F.2d at 905. Article XVII, Section 3 of the State Constitution and Section 20-3-10(3) of the Code authorize the granting of a divorce on the basis of physical cruelty. Physical cruelty has been defined as "actual personal violence, or such a course of physical treatment as endangers life, limb or health, and renders cohabitation unsafe." Godwin v. Godwin, 245 S.C. 370, 374, 140 S.E.2d 593 (1965). Domestic violence would be present in those cases in which a divorce was granted on the basis of physical cruelty and may well have been present in marriages dissolved on other grounds.

In addition, Section 20-3-90 of the Code requires the trial judge (unless the matter has been referred to a master or special referee) to state in the decree of divorce that he has attempted to reconcile the parties to the action and that his efforts to effect reconciliation were "unavailing." This statute reflects the public policy of this State toward marriage "to foster and protect it, to make it a permanent and public institution, to encourage the parties to live together, and to prevent separation." Brown v. Brown, 243 S.C. 383, 387, 134 S.E.2d 222 (1963). In cases of divorce involving physical cruelty, it would be beneficial to the reconciliation process to have the means to treat domestic violence; otherwise, the violence may be perpetuated in that or subsequent marriages, depending upon whether reconciliation is effected. Treatment of domestic violence could thus comport with the public policy to preserve marriages if at all possible. To fund such a program, a higher filing fee for divorce actions might be a reasonable approach.

Of course, the foregoing is only one suggestion of a possible rational relationship between a classification (i.e., the higher fee for filing divorce cases) and the governmental objective to be served thereby (i.e., preservation of marriage wherever possible). Undoubtedly the General Assembly could establish whatever rational justification it wished to impose the higher filing fee. As long as such a rational relationship could be

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established, then the imposition of higher filing fees for divorce actions, the proceeds of which would fund domestic violence programs, would most probably withstand a challenge under the equal protection clause of the Fourteenth Amendment to the United States Constitution.

With kindest regards, I am

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP:sds

Enclosures

REVIEWED AND APPROVED BY:

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