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November 18, 1987

Larry W. Propes, Deputy Director
Court Administration
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Dear Mr. Propes:

You have requested the advice of this Office as to several questions concerning the filing of Orders of the Workers' Compensation Commission (Commission) and letters of conservatorship with clerks of court. These questions are addressed separately below.

- 1) Whether merely filing a Commission Order with the Office of the Clerk of Court gives the Order the effect of a judgment?

§42-17-70 of the Code of Laws of South Carolina 1976 provides as follows:

"Any party in interest may file in the Court of Common Pleas in the county in which the injury occurred a certified copy of...an Order or decision of the Commission...whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment had been rendered in a suit duly heard and determined by such court...." (Emphasis added).

Here, that the court is directed to render judgment while the Clerk of Court, in a subsequent part of §42-17-70, is directed to enter certificates showing compliance with §42-5-20 indicates that these duties are to be performed

by different officials. Sutherland Statutory Construction Vol. 2A, §46.05. Moreover, general case law has stated that the "...words 'court' and 'judge' are often used indiscriminately and interchangeably..." (Bradford v. Richardson, 111 S.C. 205, 97 S.E. 58, 61 (1918)) and that "[t]he judgment issued from the court not from the attorneys or the clerk". (McCants v. West Virginia Pulp and Paper Company, 223 S.C. 467, 76 S.E.2d 614, 615 (1953)). Therefore, the safer legal course of action under this statute appears to be to obtain the judgment from a judge.

- 2) Whether a fee may be charged for filing a Commission Order?

Previous opinions of our Office have concluded that, except for fees for services such as copying, clerks of court may not collect fees additional to those permitted by §8-21-310 of the Code or for items not covered by such provisions except as otherwise expressly provided by statute. Ops. Atty. Gen. (March 24, 1986, June 11, 1985, June 19, 1980). Accordingly, because no statute expressly provides for a filing fee for Commission Orders, no authority appears to exist for charging a fee for such services.

- 3) Whether the clerk may notify the parties of the judgment upon the Commission Order pursuant to Rule 77(d) South Carolina Rules of Civil Procedure?

Rule 77(d) requires the clerk to give notice of entry of judgments. Because §42-17-70 gives judgments rendered upon Commission Orders the same effect as judgments rendered in suits heard and determined by courts, notice should be provided pursuant to Rule 77(d). Sutherland, Vol. 2A, §51.02; Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

- 4) Whether judgments upon Commission Orders may be cancelled in the same manner as other judgments?

Section 15-35-650 sets forth the procedure for the cancellation of judgments. This provision should apply to cancellation of Commission Orders on which judgment is rendered because such judgments under §42-17-70 have the same effect as judgments rendered in suits in court. See supra.

Under §15-35-650, cancellations are made by the judgment creditor or his assignee. My understanding is that the Commission is the judgment creditor under the orders in question. Therefore, as to such orders, the Commission may file certificates setting forth the Commission's cancellation of judgments.

- 5) What is the appropriate filing fee for letters of conservatorship?

Section 62-5-421 provides that letters of conservatorship shall be filed "...where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate." Section 8-21-310(9) provides for a fee of \$4.00 plus \$1.00 per page for each page in excess of three pages for the recording of any paper affecting title or possession of real estate or personal property and are required by law to be recorded. Because letters of conservatorship transfer all assets of a protected person to the conservator (§62-5-421), and because §62-5-421 requires such letters to be filed and recorded in the Office where real estate conveyances are recorded, these letters clearly appear to be documents contemplated by the legislature as affecting title or possession of real estate under §8-21-310(9). Therefore, charging the fee set forth in §8-21-310(9) would be appropriate.

In summary, the following conclusions appear to be appropriate under the above authority:

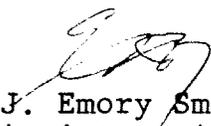
- 1) The judge rather than the clerk of court should render judgment upon Commission Orders pursuant to §42-17-70.
- 2) No fee should be charged for the filing of such Orders.
- 3) Notice of the rendering of such judgments should be provided under Rule 77(d).
- 3) Such judgments may be cancelled by the Commission's providing evidence that the judgment creditor has cancelled the judgment.

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- 4) The fee set forth in §8-21-310(9) should be charged for the filing of letters of conservatorship under §62-5-421.

If you need additional information, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED:



Robert D. Cook
Executive Assistant for Opinions