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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 3, 2005

DeShield Smith, Circuit Court Representative
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Mr. Smith:

In a letter to this office you questioned the requirement of the payment of a filing fee when a case is transferred from the federal district court to the state circuit courts. S.C. Code Ann. § 8-21-310(11)(a) provides that a filing fee may be assessed “[f]or 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, one hundred dollars.”

This office in an opinion dated February 23, 1994 indicated that “[p]rior opinions of this office have indicated that in the absence of any exemption clearly indicating that certain filing fees are not to be paid, such fees should be charged.” The State Supreme Court has examined the issue of the payment of filing fees in association with the question of the payment of such fees by indigents. Such analysis is useful in responding to your question regarding the assessment of filing fees generally.

In Ex parte: Martin v.State, 321 S.C. 533, 535, 471 S.E.2d 134, 134-135 (1995) the Court determined that “(i)n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions.” In that decision, the Court specifically noted statutory provisions allowing or requiring the waiver of filing fees, none of which are applicable to the situation addressed in your request letter.¹ The Court also acknowledged that

¹Among the statutes cited which allow or required waiver of filing fees were S.C.Code Ann. §§ 8-21-310(11) (no fee to be paid to appeal from a conviction in magistrate's or municipal court); 17-27-60 (no fee required of indigent who files a post-conviction relief action); 20-4-40(e) (clerks of court must assist persons seeking an order of protection from domestic abuse by giving them

(continued...)

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“...where certain fundamental rights are involved, the Constitution requires that an indigent be allowed access to the courts.” 321 S.C. at 535. See also Lakes v. State, 333 S.C. 382, 510 S.E.2d 228 (1998). In Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 586 S.E.2d 124 (2003), the Court cited its decision in Ex parte: Martin in concluding that there is no statutory provision allowing the waiver of filing fees for an appeal brought under the APA. In reaching its conclusion, the Court noted that Section 8-21-310(11)(a) “...provides that a clerk of court must collect a filing fee of \$100.00 for *any* complaint or petition.” 355 S.C. at 445-446. The Court noted further that

The General Assembly is the body charged with the power to waive filing fees, and they have not created a waiver for this set of cases. Further, this is not a case involving “fundamental rights,” so access to the courts is not constitutionally required in this case.

355 S.C. at 446. A prior opinion of this office dated March 26, 1986 stated that

...it is clear that consistent with the...decisions of the United States Supreme Court, due process does not require a waiver of filing fees in civil actions involving indigents unless a fundamental interest, such as marriage, is involved. Moreover,...the statutory authority to waive fees in this State for filing actions is limited to specific types of cases, such as criminal appeals from magistrates and municipal courts, applications for post-conviction relief, employment security cases, and certain family court cases.

As noted by the Court in Sullivan, supra, Section 8-21-310(11)(a) “...provides that a clerk of court must collect a filing fee of \$100.00 for *any* complaint or petition.” 355 S.C. at 445-446. Moreover, Section 8-21-310(11)(a) does not specifically provide for a waiver or exemption by the clerk of court for the payment of a filing fee for cases that are transferred or remanded to the court of common pleas from federal district court. As a result, absent some determination that the matter associated with the filing involves “fundamental rights” so as to constitutionally mandate access to the courts, in my opinion, the filing fee provided by such statutory provision must be paid for cases transferred or remanded from federal court to the court of common pleas.

¹(...continued)

forms to proceed in forma pauperis); 20-7-1440 (no court fee may be charged in delinquency and neglect actions); 41-39-30 (fee waived in a proceeding involving a claim for benefits from the Employment Security Commission); and, 44-41-34(B) (a minor may file an action seeking consent for an abortion without paying any filing fee).

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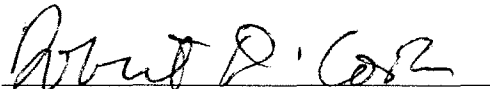
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General