S T A T E O F T E N N E S S E E
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August 1, 2006

Opinion No. 06-121

Court Clerks' Fees

QUESTIONS

1. Whether the post-judgment fee contained in Tenn. Code Ann. § 8-21-401(i)(1) applies to all motions and occurrences after the judgment is signed or to all motions and occurrences after the judgment becomes final.

2. Do the fee provisions of Tenn. Code Ann. § 8-21-401(i)(1) apply to motions filed by the defendant?

OPINIONS

1. The standard post-judgment fee contained in Tenn. Code Ann. § 8-21-401(i)(1) applies to all motions and occurrences after the judgment is properly entered.

2. Yes, the statute does not distinguish between plaintiff's and defendant's filings.

ANALYSIS

Tenn. Code Ann. § 8-21-401(i)(1) states as follows:

> Unless otherwise provided, court clerks in criminal and civil cases in all courts shall charge a standard post-judgment fee of twenty-five dollars ($25.00). This fee shall be charged per occurrence and shall be charged regardless of whether judgment is enforced by garnishment, execution, levy or other process. This fee shall also apply to post-judgment interrogatories, publications, motions to set installment payments, and orders and pleas.

This Office has considered two possible interpretations of this provision. The first is that the term "post-judgment" means the standard fee may not be charged before the passage of thirty days after entry of the judgment. The second interpretation is that the term "post-judgment" means any time after entry of the judgment. The difference between these two interpretations is significant for the court clerks charging fees. The thirty-day time period is one in which there could be considerable

activity at the trial court level. Our objective is to determine what the legislature intended when it enacted this provision.

Although "post-judgment" is a commonly used term, it is not defined in statute or rule. To ascertain the legislature's intent, we look at the statutory language itself and give it a plain and natural reading. *Austin v. State*, 831 S.W.2d 789, 791 (Tenn. Ct. App. 1991).[1] In *Austin*, the Court of Appeals summarized the applicable rules of statutory construction as follows:

> The rule of statutory construction to which all others yield is that the intention of the legislature must prevail. Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used when read in the context of the entire statute, and without any forced or subtle construction to limit or extend the import of the language.
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> It is the duty of the Court to reconcile inconsistent or repugnant provisions of a statute and to construe a statute so that no part will be inoperative, superfluous, void or insignificant. The court must give effect to every word, phrase, clause and sentence of the act in order to achieve the legislature's intent, and it must construe a statute so that no section will destroy another.

Austin, 831 S.W.2d at 791 [internal citations omitted].

The plain language of Tenn. Code Ann. § 8-21-401(i)(1) gives guidance. The clerk must charge a standard post-judgment fee per occurrence. The provision's second sentence lists occurrences related to enforcement of the judgment. The third sentence lists additional types of occurrences to which the fee will apply. Its language is broader and includes all "orders" and "pleas." We think this language indicates that the standard fee applies to a wide variety of post-judgment events, but that still leaves the question of when "post-judgment" begins.

Under the Tennessee Rules of Civil Procedure, the term "judgment" includes any decree or order from which an appeal lies. Tenn. R. Civ. P. 54.01. In a case involving an appeal as of right, the party or parties must file a notice of appeal within thirty (30) days after the date of entry of the judgment. Tenn. R. App. P. 4. The entry of the judgment marks the date on which the order becomes effective, and to be valid, the entry of the judgment must meet the criteria set out in Tenn. R. Civ. P. 58.[2] When properly entered, the judgment becomes effective, and the thirty-day window for

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[1] We listened to the legislative history of this statutory provision seeking clarification of the term "post-judgment." The legislature did not discuss the issue.

[2] Rule 58 reads in pertinent part as follows:

> Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:
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> (1) the signatures of the judge and all parties or counsel, or
>
> (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or

appeal begins. *See, e.g., Green v. Moore*, 101 S.W.3d 415, 420 (Tenn. 2003). The clerk of the court may issue a writ of execution at any time after thirty (30) days after judgment. Tenn. Code Ann. § 26-1-203.

After the entry of the judgment, the parties may seek appeal within thirty (30) days. Tenn. R. App. P. 4(a). In those thirty days, parties may file a motion for new trial, a motion for directed verdict, a motion to alter or amend the judgment, or a motion to amend or make additional findings of fact. Tenn. R. Civ. P. 59.01. A party may also file a motion for relief from judgments or orders under Tenn. R. Civ. P. 60 within a "reasonable" time. For motions seeking relief because of mistake or fraud, a "reasonable time" is not more than a year after the judgment. Tenn. R. Civ. P. 60.02. A motion for relief under Tenn. R. Civ. P. 60 does not affect the finality of the judgment or suspend its operation, although the court has the discretion to enter an order suspending the operation of the judgment under certain circumstances. Tenn. R. Civ. P. 60.02

Because the Tennessee Rules of Civil Procedure contemplate and permit actions by the parties after the judgment is entered, but before the thirty days elapses,[3] we conclude that the standard post-judgment fee is applicable to events happening after the entry of the judgment. This conclusion means that court clerks may apply the standard post-judgment fee to events occurring after the judgment's effective date.

The statute does not distinguish between plaintiff's and defendant's post-judgment filings but, rather, is keyed to a particular time frame. The statute applies to both plaintiff and defendant. Under the Tennessee Rules of Civil Procedure, the defendant may file the same motions for relief as the plaintiff. Thus, it seems logical, though not stated in the statute, that the court clerk may apply the standard post-judgment fee to the defendant's filings as well.

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(3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

[3] Or, in the case of a Rule 60 motion, a time period longer than the thirty (30) days.

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Requested by:

The Honorable Walter C. Kurtz
Judge
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