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Opinion No. 10-100

Payment of Garnishment Costs

QUESTION

When must the costs on a garnishment be paid?

OPINION

Court costs charged under Tenn. Code Ann. § 8-21-401 may be collected when the services are requested from the clerk or other officer of the court. In counties where Tenn. Code Ann. § 8-21-409 applies, court clerks may not charge costs until the service for which the charge is being made has been performed. Similarly, fees of sheriffs or constables under Tenn. Code Ann. § 8-21-901 are not payable until collection has occurred or been attempted.

ANALYSIS

This opinion addresses whether costs on a garnishment must be paid when garnishment is requested or when collection has occurred or been attempted. The answer depends upon the statute under which the charge is being assessed.

1. Clerk's Fees

Costs associated with a garnishment are provided by statute. Under Tenn. Code Ann. § 8-21-401(i)(1), court clerks may charge a standard post-judgment fee of twenty-five dollars. The fee is charged per occurrence and applies to enforcement of a judgment by garnishment. Id. The governing statute provides in relevant part:

> Except as otherwise provided by law, the costs provided in this section in civil cases are chargeable and may be collected at the time the services are requested from the clerk or other officer of the court; however, nothing in this section should be construed to limit the ability of a party to initiate a judicial proceeding by filing a pauper's oath.

Tenn. Code Ann. § 8-21-401(a) (emphasis added). If a judgment creditor requests to enforce a judgment by garnishment, therefore, the court clerk may collect the fee provided by Tenn. Code Ann. § 8-21-401(i)(1) from the judgment creditor when the request is made. A judgment creditor

may then recover this cost from the judgment debtor in that Tenn. Code Ann. § 26-2-106(c) provides that "[t]he debtor shall pay the costs of any and all garnishments on each debt on which suit is brought."

The fees provided for in Tenn. Code Ann. § 8-21-401 do not apply to the court clerks in counties with a charter form of government and a population of not less than 350,000 nor more than 450,000 according to the 2000 federal census or any subsequent census (currently only Knox County). Tenn. Code Ann. § 8-21-401(n). In those counties, the fees recited in Tenn. Code Ann. § 8-21-409 are to be charged rather than those in Tenn. Code Ann. § 8-21-401. The general statute on official fees provides:

> No officer is entitled to demand and receive fees allowed by law ***until the duty or service for which they are granted is performed,*** unless otherwise expressly provided by law.

Tenn. Code Ann. § 8-21-102 (emphasis added). Unlike Tenn. Code Ann. § 8-21-401, section 8-21-409 forbids clerks from collecting fees before performing a service. For this reason, court clerks' fees authorized from counties specified under Tenn. Code Ann. § 8-21-409 are payable only after the service the fee covers is performed.

2. Sheriff's or Constable's Fees

Under Tenn. Code Ann. § 8-21-901(a)(2)(B)(i), a sheriff or constable is entitled to a fee of twenty dollars for each garnishment served. As noted above, under Tenn. Code Ann. § 8-21-102, unless otherwise expressly provided by law, no officer may demand a fee until the duty or service for which the fee is granted has been performed. Similarly, subsection (a) of Tenn. Code Ann. § 8-21-901 provides that "the sheriff or constable is entitled to demand and receive the respective fees for the following services where services are actually rendered[.]" Thus, the twenty-dollar fee charged by a sheriff or constable under Tenn. Code Ann. § 8-21-901(a)(2)(B)(i) is payable after the officer serves a garnishment. *See also* Tenn. Code Ann. § 67-5-2007(b) (officers' fees for collecting delinquent taxes by serving a garnishment are taxed as costs and are payable by the delinquent taxpayer).

Finally, Tenn. Code Ann. § 8-21-105 provides a mechanism for resolving fee questions in the context of the case in which the fees must be paid. The statute states: "It is the duty of the courts to decide, upon application by the officer entitled to compensation, any question arising under the law, and such decision will protect the officer acting under it."

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