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August 23, 1954
Letter Opinion
No. 54-217-L

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ARIZONA ATTORNEY GENERAL

The Honorable Grayce Gibson O'Neill
Clerk of the Superior Court
Pima County Courthouse
Tucson, Arizona

Re: Assessed jury fees

Dear Mrs. O'Neill:

This is in reply to your letter of July 30, 1954, in which you ask a question concerning jury fees on cases where there has been a reversal in the Supreme Court.

If the judgment of the lower court is reversed by final decision in the Supreme Court, then an entry of judgment for the jury fees in favor of the clerk should be made against the party who was successful in the lower court, and an abstract thereof filed for record in the office of the county recorder pursuant to Section 62-101, A.C.A. 1939. The entry against the party who was unsuccessful in the lower court should be cancelled, and the lien created by the recording of the abstract of judgment should be released of record. CLERKE v. HARWOOD, (1797) 3 Dall (U.S.) 342, 1 L.Ed. 628; WILLIAMS v. CRAIG (1810), 6 Cranch (U.S.) 183, 3 L.Ed. 393; EMMONS v. SO. PAC. (1920) 97 Ore. 263, 191 P. 333; BLADRIDGE v. KLEIN (1933) Civ. App. 56 S.W. 2, 897.

If the judgment of the lower court is set aside by the Supreme Court remanding the case for a new trial, the final assessment of the jury fees must await the further judgment of the lower court. In the meantime, the judgment for the jury fees should be set aside, and the lien created by the recording of the abstract of judgment released of record pursuant to Section 62-104, A.C.A. 1939. MCKINNEY v. NAYBERGER, et al, (1931) 138 Ore. 203, 6 P. 2d 229; DURKEE-THOMAS CORP. v. DOHERTY (1932), 40 Ariz. 399, 12 P. 2d 617; MERIDIAN COCA COLA CO. v. WATSON (1933) 164 Miss. 389, 145 So. 344; BORROW ET UX v. EL DORADO LODGE (1953) 75 Ariz. 218, 254 P. 2d 1027.

If the appellant is successful in the new trial, costs will be taxed against his opponent. BARTH v. A & B SCHUSTER CO. (1923)

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25 Ariz. 546, 220 P. 391; WESTPHALL v. WAIT (1905) 165 Ind. 353,
73 N.E. 1089.

Furthermore, if the appellant is successful in substantially
reducing the amount of the judgment he is generally entitled to
costs. EASTERN R.R. CO. v. HEAD (1924) 26 Ariz. 259, 224 P. 1057;
NICHOLS ET AL v. CITY OF PHOENIX, ET AL. (1949) 64 Ariz. 124,
202 P. 2d 201.

Where both parties have appealed and each has succeeded in
having the judgment reversed on an important point, the costs of
appeal will be equally divided between them. SIOUX CITY & ST. P.
R. CO. v. CHICAGO M. & ST. P. R. CO. (1885) 117 U.S. 406, 29 L.Ed.
928; TICE v. DURBY (1882) 59 Ia. 312, 13 N.W. 301.

We hope the above will be of assistance to you.

Yours very truly,

JAMES P. BARTLETT
Special Assistant to
The Attorney General

JPB:elf