

Wright



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

February 25, 1977
LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mrs. Jeanne C. Stauffer
Deputy Pima County Attorney
Director, Family Support Division
45 West Pennington
Tucson, Arizona 85701

Re: 77-52 (R77-37)

Dear Mrs. Stauffer:

Your letter of January 26, 1977 requested our opinion on the collection of fees by the Clerk of the Superior Court in actions filed under the Uniform Reciprocal Enforcement of Support Act. A.R.S. §§ 12-1651 et seq. The collection of fees by the Clerk of the Superior Court is governed by A.R.S. § 11-554. That section provides, in pertinent part:

A. Except as otherwise provided by law, the clerk of the superior court shall receive the following fees: * * *

On its face this section requires collection of the specified fees set forth therein unless "otherwise provided by law. . . ." A.R.S. § 11-554 does not therefore take precedence over other statutes regulating the collection of fees but is operative only to the extent it is not inconsistent with them.

The uniform Reciprocal Enforcement of Support Act contains a section regulating the collection of costs or fees:

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplies to the obligor, be paid in whole or in part by the obligor or by the state. Such costs or fees do not have priority over amounts due to the obligee. A.R.S. § 12-1664.

Mrs. Jeanne C. Stauffer
February 25, 1977
Page Two

This section prohibits the Court from charging the obligee¹ and instead permits the Court to collect fees and cost from the obligor.² Specifically A.R.S. § 12-1664 notes that the costs or fees chargeable to the obligor do not have a priority over the support payments.

From this we conclude that the clerk of court may not deduct costs and fees chargeable to the obligor from support payments which the obligor sends to the clerk for transmittal to the obligee pursuant to A.R.S. § 12-1673.³ Instead these costs and fees must be sought directly from the obligor without resort to the support payments actually made.

Sincerely,



BRUCE E. BABBITT
Attorney General

BEB:DWS:jrs

1. A "person . . . to whom a duty of support is owed. . . ." A.R.S. § 12-1651.7. Atty.Gen.Op.No. 61-73 reaching a similar conclusion is grounded upon a statute which was repealed after the issuance of the opinion.

2. A "person owing a duty of support. . . ." A.R.S. § 12-1651.8.

3. Atty.Gen.Op.No.63-4 permitting the Clerk of the Superior Court to deduct one dollar for the transmittal of support payments under the authority of the predecessor to A.R.S. § 11-554.A.12 is preempted by A.R.S. § 12-1664 only insofar as the support payments arise out of the operation of A.R.S. §§ 12-1651 et seq.