

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

FILED
BY: *KS*
2004 DEC -3 AM 11:47
SUPERIOR COURT CLERK

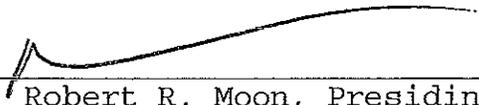
IN THE MATTER OF:)
)
THE ADOPTION OF A FEE)
DEFERRAL POLICY FOR)
MOHAVE COUNTY SUPERIOR COURT)
_____)

ADMINISTRATIVE ORDER
2004-48

In order to achieve compliance with operational standards established by the Arizona Supreme Court administrative staff, it is necessary to revise our procedures for enforcement of fee deferral orders. Therefore,

IT IS ORDERED adopting the attached policy effective this date.

DATED this 3rd day of December, 2004.



Robert R. Moon, Presiding Judge
Mohave County Superior Court

Original filed with the Clerk of the Superior Court in Mohave County

Fee Waiver and Deferral Policy

This policy establishes procedures regarding the deferral or waiver of court fees and costs to ensure access to the Court for litigants with limited financial resources, while preventing the abuse of the system by those applicants who possess the financial resources to pay.

The Clerk's office will work in conjunction with the Judicial officers to ensure that the issue of payment of deferred filing fees is addressed prior to the closing of a case - preferably at the time of any final hearing in a matter. This will prevent the need for litigants to return to the court after a final hearing in their case, and will avoid the expenditure of judicial time and resources for setting any additional hearings after a final Judgment has been entered in a case.

AT MINIMUM:

It will be the Applicant's responsibility to provide a clear picture of their financial resources to the Court by submitting a COMPLETED application. Incomplete applications will be denied. For the purposes of recording a Consent Judgment in the event the Applicant fails to pay their court fees, it may be necessary that they provide their Date of Birth and Social Security number for a file data sheet.

For inmates incarcerated at the Arizona Department of Corrections (ADOC), these inmates are responsible for the full payment of Court fees and may not have fees deferred or waived, except in cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support. On the filing of a civil action or proceeding, the clerk shall assess and collect a first time payment of 20%. Thereafter, four additional payments of 20% should be scheduled.

FOR SPECIAL COMMISSIONERS:

If the Applicant indicates they are receiving government assistance from any state/federal program, they will be required to show proof of same. Examples of such proof include, but are not limited to: Benefits summary from DES or quarterly statement from SSI.

JUDICIAL OFFICERS:

All applications submitted for review by a judicial officer should be forwarded to the assigned judge, and may be granted based on the guidelines set forth by the Supreme Court, or for good cause shown, or at the Court's discretion. In most cases, a schedule of payments should be set to get the fees paid in as expeditious a manner as possible while still considering the financial resources of the applicant. Generally, the suggested schedule of payments should require the payment of fees in thirds, and in any event, shall require the first payment to commence ON THE DATE OF FILING. This schedule anticipates that fees will be paid in a three month period.

Except in cases where final disposition in a civil or domestic case is prior to three (3) months from commencement, no additional hearings on deferred fees might need to be set in a matter as they will be addressed at the final hearing. In cases finalized within three (3) months from commencement, additional hearings on deferral fees will be needed.

Generally, for example: ORDERED that filing fees in the amount of \$236 be deferred. Applicant shall pay 1/3 each month commencing the date of filing.

The applicant may submit a Supplemental Application if they are unable to afford the payment schedule as set forth in the Judge's order. Also, each judge is in charge of their calendar, and determines how much time they are willing to devote to the collection of deferred fees, and for how many months they will want to revisit the issue in the event payment is not made. Note that if payments are spread out over several months, the Clerk's office will be required to check the file that much more often.

If payment is not made, the Judicial officer can either set an OSC hearing at which the applicant must appear and show cause why they should not be held in contempt for failure to pay, or the officer can choose to address the issue at any regularly scheduled future hearing in the matter. The Minute Order which sets the OSC date should advise the applicant that if payment is made prior to the OSC date, the OSC will be vacated without further order of the court.

It is most efficient to address the issue of deferred fees at the time of regularly scheduled hearings in a case, and the judges must take a moment to do so in the event the Clerk's office has inadvertently not returned the file for any missed payment. It takes only moments for the Court Clerk or JA to check the docket.

Applicants can usually pay their fees or a portion thereof when pressed to do so. The Judges must also review and address any fees deferred by a Special Commissioner at the time of filing. These fees have to be addressed by the judge prior to the closing of the case. The fees must be paid, waived, or a consent judgment entered in order to close out the case.

At any time, the Judicial officer or their staff can check the docket to determine the payments made on a case, and the amount still due.

CLERK'S OFFICE:

It is the responsibility of the Clerk's office to devise a system to clearly mark any case for which the payment of deferred fees needs to be addressed by the judicial officer. The docket for a case must reflect any payments made on deferred fees, and if a payment is made on a case which has been set for hearing for non-payment of fees, and if the clerk's office is aware of said hearing, the clerk's office should notify the Judicial officer's staff so they may vacate said hearing.

It is the responsibility of the Clerk's office to devise a system whereby the file will be returned to the judicial officer in the event a payment is missed by the applicant as ordered by the Judge. While it is suggested that said event be calendared for a date two weeks past the date payment is due (since many applicants arrive with payment only a few days late), it will be at the discretion of the Clerk and the Judicial Officer if said "grace period" is applied.

It is the responsibility of the Clerk's office to return the file to the judicial officer if the judicial officer inadvertently does not address the issue of unpaid filing fees at the time of final hearing so the issue can be addressed prior to the closing of a case. The file return shall occur upon completion of the minutes of that hearing.

The Clerk's office and Judicial officers will cooperate in developing systems which will efficiently address the issue of unpaid filing fees to ensure payment in as expeditious a manner as possible.