

22A: 2-6; 22A: 2-12; 22A: 2-15

LEGISLATIVE HISTORY CHECKLIST

WASA 22A:2-6; 22A:2-12; 22A:2-15 (Superior Court---fees---civil cases---increase)

LAWS OF 1980 CHAPTER 80

Bill No. A1073

Sponsor(s) Bate, Herman

Date Introduced Feb. 11, 1980

Committee: Assembly Judiciary, Law, Public Safety and Defense

Senate Judiciary

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly April 21, 1980

Senate June 26, 1980

Date of approval August 1, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xx~~

Committee Statement: Assembly Yes ~~xx~~

Senate Yes ~~xx~~

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing Yes ~~xx~~

Following were printed.

Reports Yes ~~xx~~

Hearings ~~Yes~~ No

Attached:

974.901 New Jersey. Supreme Court. Committee
C86 on Civil Practice.
Report.
(In: NJ Judicial Conference
Proceedings, 1979, pp.23-24 and
transcript)

974/73

(over)

974.901 New Jersey. Supreme Court. Committee
C86 on Civil Practice.
Report.
(In: NJ Judicial Conference
Proceedings, 1979, pp.17-18)

Case referred to in Senate Committee statement:
Murillo v. Bambrick, 508 F. Supp. 830 (1981)

CHAPTER 80
AFF

8-1-80

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1073

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 11, 1980

By Assemblymen BATE and HERMAN

Referred to Committee on Judiciary, Law, Public Safety and Defense

AN ACT concerning fees in civil cases in the Superior Court, amending sections 22A:2-6, 22A:2-12 and 22A:2-15 of the New Jersey Statutes and repealing N. J. S. 2A:34-16 and N. J. S. 2A:34-17.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. N. J. S. 22A:2-6 is amended to read as follows:

2 22A:2-6. Upon the filing or entering of the first paper or pro-
3 ceeding in any action or proceeding in the Law Division of the
4 Superior Court, the plaintiff shall pay to the clerk **[\$60.00]** \$75.00
5 for the first paper filed by him, which shall cover all fees payable
6 therein down to, and including entry of final judgment, taxation
7 of costs, copy of costs and the issuance and recording of final
8 process, except such as may be otherwise provided herein, or pro-
9 vided by law, or the rules of court. Of the **[\$60.00]** \$75.00 paid to
10 the clerk, \$25.00 shall be paid over by him to the treasurer of the
11 county in which venue is laid for the use of the county. *Any per-
12 son filing an answer setting forth a counterclaim or a third party
13 claim in such cause shall pay to the clerk \$75.00 for the first paper
14 filed by him.* Any person other than the plaintiff filing any other
15 paper in any such cause shall pay to the clerk **[\$30.00]*** *\$40.00
16 for the first paper filed by him.

1 2. N. J. S. 22A:2-12 is amended to read as follows:

2 22A:2-12. Upon the filing of the first paper in any action or
3 proceeding in the Chancery Division of the Superior Court, there
4 shall be paid to the clerk of the court, for the use of the State, the
5 following fees, which, except as hereinafter provided, shall consti-
6 tute the entire fees to be collected by the clerk for the use of the
7 State, down to the final disposition of the cause:

8 Receivership and partition, \$60.00.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

9 For withdrawal of surplus and other moneys deposited with the
 10 court where the sum to be withdrawn is less than \$100.00, no fee:
 11 where the sum is \$100.00 or more but less than \$1,000.00, a fee of
 12 \$2.00; where such sum is \$1,000.00 or more, a fee of \$5.00.

13 Application for permanent alimony: for withdrawal of mort-
 14 gages and other applications for relief filed subsequent to final
 15 judgment \$5.00.

16 All other actions and proceedings except in probate cases
 17 ~~[\$60.00]~~ \$75.00.

1 3. N. J. S. 22A:2-15 is amended to read as follows:

2 22A:2-15. For performing services in all probate proceedings
 3 in the Superior Court, Chancery Division, there shall be paid to
 4 the clerk of the court for the use of the State the following fees
 5 which, except as hereinafter provided, shall constitute the entire
 6 fees to be collected by the clerk for the use of the State, down to
 7 the final disposition of the cause:

8 Each action upon the filing of the first paper in the action,
 9 ~~[\$60.00]~~ \$75.00.

10 Application for relief filed subsequent to final judgment, upon
 11 the filing of the first paper, \$10.00.

ACCOUNTING

12 Auditing, stating, reporting and recording accounts of executors,
 13 administrators, guardians, trustees, assignees, as follows:

14 In estates up to and including \$2,000.00, \$30.00;

15 In estates from \$2,000.00 to and including \$10,000.00, \$50.00;

16 In estates from \$10,000.00 to and including \$30,000.00, \$65.00;

17 In estates from \$30,000.00 to and including \$65,000.00, \$85.00;

18 In estates from \$65,001.00 to \$200,000.00— $\frac{3}{20}$ of 1%;

19 In estates exceeding \$200,000.00— $\frac{1}{10}$ of 1%, but not less than
 20 \$300.00.

21 For each page of accounting, in excess of one, \$2.00.

22 In computing the amount of an estate for the purpose of fixing
 23 the fees of the Clerk of the Superior Court, for auditing and report-
 24 ing the account, the balance from the prior account shall be
 25 excluded.

26 No fees herein allowed shall be charged against the recipient of
 27 any pension, bounty or allowance for services of the Clerk of the
 28 Superior Court, the Chancery Division of the Superior Court in
 29 respect thereof, pursuant to N. J. S. 3A:29-1 to 3A:29-4.

COMMISSIONS ON DEPOSITS

30 On commissions on deposits, including any deposit made pur-
 31 suant to sections 31 and 32 of chapter 67, of the laws of 1948, if

32 under \$100.00, $\frac{1}{2}$ of 1% of it; if over \$100.00 and under \$1,000.00,
33 $\frac{1}{4}$ of 1% on such excess; if over \$1,000.00, $\frac{1}{8}$ of 1% of such excess.

MISCELLANEOUS CHARGES

34 Filing an exemplified copy of a will or administration proceeding
35 from a foreign state, \$5.00;

36 Filing a caveat not in a pending cause, \$2.00;

37 Certificates, each \$1.00;

38 Subpenas, each \$1.00;

39 Minimum charge for all other papers or services by the clerk,
40 \$1.00.

1 4. N. J. S. 2A:34-16 and N. J. S. 2A:34-17 are repealed.

1 5. This act shall take effect 30 days after enactment.

MISCELLANEOUS CHARGES

- 34 Filing an exemplified copy of a will or administration proceeding
 35 from a foreign state, \$5.00;
 36 Filing a caveat not in a pending cause, \$2.00;
 37 Certificates, each \$1.00;
 38 Subpenas, each \$1.00;
 39 Minimum charge for all other papers or services by the clerk,
 40 \$1.00.
- 1 4. N. J. S. 2A:34-16 and N. J. S. 2A:34-17 are repealed.
 1 5. This act shall take effect 30 days after enactment.

STATEMENT

These proposed amendments to the New Jersey court fee system would serve two purposes. First, they would eliminate the approval fee required in matrimonial cases before the Superior Court—currently, these fees are \$50.00 in uncontested cases and \$60.00 in contested cases. Secondly, this legislation would increase the general fee for the filing of all civil complaints from \$60.00 to \$75.00.

In the past, the \$50.00 or \$60.00 differential required for matrimonial cases was justified by an additional review provided in such cases by a Standing Master who determined whether or not the matter was fit for trial. Today, no similar review exists to justify any such differential in fees. As a result, these approval fees for matrimonial cases have been questioned as an unreasonable classification in an action pending before the Federal district court. The elimination of these fees would thus serve to eliminate an anachronism from the court's fee structure.

The simultaneous increase in the general filing fee for all civil complaints, from \$60.00 to \$75.00, is a necessary increase in court revenues to adjust for the elimination of the matrimonial fees and to compensate for inflationary pressures.

A1073 (1986)

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1073

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 24, 1980

These proposed amendments to the New Jersey court fee system would serve two purposes. First, they would eliminate the approval fee required in matrimonial cases before the Superior Court—currently, these fees are \$50.00 in uncontested cases and \$60.00 in contested cases. Secondly, this legislation would increase the general fee for the filing of all civil complaints from \$60.00 to \$75.00, and Assembly Judiciary, Law, Public Safety and Defense Committee amendments would raise the filing fee for counterclaims and third-party claims from \$30.00 to \$75.00, and for all other answers from \$30.00 to \$40.00.

In the past, the \$50.00 or \$60.00 differential required for matrimonial cases was justified by an additional review provided in such cases by a standing master who determined whether or not the matter was fit for trial. Today, no similar review exists to justify any such differential in fees. As a result, these approval fees for matrimonial cases have been questioned as an unreasonable classification in an action pending before the Federal district court. The elimination of these fees would thus serve to eliminate an anachronism from the court's fee structure.

The simultaneous increase in the general filing fee for all civil complaints, from \$60.00 to \$75.00, is a necessary increase in court revenues to adjust for the elimination of the matrimonial fees and to compensate for inflationary pressures.

The Assembly Judiciary, Law, Public Safety and Defense Committee amendments would provide additional revenue for new Judiciary programs and would adjust these fees consistent with other fees and court costs.

The last time answer fees were raised was in 1970, which was also the last time Law Division complaint fees were raised. Raising the fee for counterclaims and third-party claims to be equal to that of complaints is justified by the essentially equal amount of work which each action causes the court. Increasing answers to \$40.00 should raise an estimated extra \$547,490. Increasing counterclaims and third-party claims to \$75.00 should raise an estimated extra \$659,655.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1073

STATE OF NEW JERSEY

DATED: JUNE 26, 1980

Under present N. J. S. 21:34-16, a special trial fee is levied in matrimonial actions. The fee is \$50.00 in uncontested cases and \$60.00 in contested cases. This special trial fee results in revenues a little in excess of \$1.2 million annually.

In the past this special fee in matrimonial cases was justified by an additional review provided by a standing master who determined whether or not the matter was fit for trial. However, since the 1971 divorce law revision, this review by a standing master has been discontinued. As a result, these approval fees for matrimonial have been challenged constitutionally as an unreasonable classification in an action, *Murillo v. Bambrick*, now pending before the U. S. District Court. There are strong indications that the fee will be declared unconstitutional.

Assembly Bill No. 1073 would eliminate the approval fee required in matrimonial cases. To compensate for the revenue losses resulting from the elimination of this fee, Assembly Bill No. 1073 would raise the complaint fee for law, matrimonial, foreclosure, general equity and probate matters from \$60.00 to \$75.00. This would bring an estimated \$1.6 million in new revenue according to figures provided by the Superior Court Clerk's Office.

Under amendments adopted by the Assembly Judiciary Committee, the fee for filing counterclaims and third party complaints in the Law Division were raised from \$30.00 to \$75.00 and the filing fee for answers in the Law Division from \$30.00 to \$40.00. This would raise, again according to the Superior Court Clerk's Office, approximately \$750,000.00 in additional revenue.

In total, enactment of Assembly Bill No. 1073 would bring to the State an increase in revenues of approximately \$1 million.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

AUGUST 1, 1980

PATRICK SWEENEY

Acting Governor Joseph P. Merlino today, in a public ceremony, signed A-1073 in the Governor's Outer Office.

The bill, co-sponsored by Assemblymen William J. Bate (D-Passaic) and Martin A. Herman (D-Gloucester), increases certain fees in civil cases in the Superior Court.

Under the former law, in order to pursue a matrimonial cause, the plaintiff had to pay either \$50 (uncontested) or \$60 (contested) more than in other cases. This difference may have been justified in the past, when a Standing Master reviewed all cases for certification for trial, but not now that such procedure has been discontinued.

This bill eliminates the matrimonial fee differential. In addition, it increases the general fee for the filing of all civil complaints from \$60 to \$75.

The bill is effective thirty days after enactment (September 1), which coincides with the new court year, making it administratively easier to adjust the fee collection procedure.

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LEGISLATIVE AND ADMINISTRATIVE RECOMMENDATIONS

A. LEGISLATIVE RECOMMENDATIONS

1. Matrimonial Trial Approval Fees.

There has been persistent and growing dissatisfaction with the special trial fee which is levied only in matrimonial actions. This fee of \$50.00 or \$60.00 set forth in R. 4:79-2 reflects the statutory mandate of N.J.S.A. 2A:34-16. Various proposals have been submitted concerning the elimination of the matrimonial trial fee which is an anachronism relating back to the functions of the Standing Master's Office prior to the divorce law revision in 1971 of careful scrutinizing of all divorce complaints to protect the State's interest in the preservation of marriage.

It is recognized that this matrimonial trial fee generates substantial revenue which redounds to the general benefit of the New Jersey treasury. Nevertheless, it is deemed inequitable to levy a special charge on a particular class of litigants. Consequently, the Committee endorses the concept of increasing filing fees for all civil complaints by amendments to N.J.S.A. 22A:2-6, -12, -13 and -15 in order to replace to some extent the revenues which would be lost by eliminating the matrimonial trial fee. Any such amendment should necessarily be accompanied by a repeal of N.J.S.A. 2A:34-16.

While considering the general question of filing fees, the Committee also endorses the concept that it is inequitable for a defendant to be charged a filing fee merely to be able to defend himself in court. The Committee recommends the elimination of the answer fee and the imposition of a filing fee, equal to the fee charged for all complaints, only for

pleadings which request affirmative relief. The Committee further supports the concept that the initial filing fee should be the exclusive fee throughout all aspects of the litigation and recommends elimination of post-judgment fees. Elimination of post-judgment fees will have a dual benefit in that: (1) it will suspend fees which are only sporadically enforced and (2) it will simplify and facilitate fiscal administration in the Superior Court Clerk's Office.

During the past year, the Administrative Office of the Courts conducted a sample survey of the types of filings in all Superior Court Civil dockets for the 1976-77 court year. The dockets surveyed included civil, law, matrimonial, general equity, probate and foreclosure actions. As a result of that survey, it was concluded that an increase in all filing fees for first pleadings and other requests for affirmative relief to \$90.00 would maintain the present revenue. The initial filing charge shall be made for all complaints or other initial pleadings, counter claims and cross-claims. With the imposition of this charge, the present fee for matrimonial trial approvals, general answers which do not assert claims for affirmative relief and post-judgment fees shall be eliminated.

Accordingly, the Civil Practice Committee concurs with the position of the Matrimonial Judges' Association and the Family Law Section of the New Jersey State Bar Association and recommends to the Supreme Court that appropriate statutory amendments be submitted to the Legislature.

2. State Rules of Court Review Commission; N.J.S.A. 2A:84A-39.1

N.J.S.A. 2A:84A-39.1 creates a permanent State Rules of Court Review Commission consisting of ten members. The Commission is charged with studying and reviewing any proposed rules of evidence which may be

that the motion of the ex-husband to reduce payments could only be made in the county of venue where, in the normal case, the ex-wife still lives.

In Sabini v. Sabini, 159 N.J. Super. 93 (App. Div. 1973) the Court held that the motion to amend the judgment could be brought in the county where the payments were being made. This creates a problem. The judge in that county does not have a file. He does not know anything about the background of the case. It requires the ex-wife, who usually has less resources than the ex-husband, to travel out of her county to the county where the payments are being made. It was felt by the Civil Practice Committee that the situation was unfair to the ex-wife and did not lead to the most efficient disposition of the motion.

Accordingly, we have recommended the adoption of R. 4:79-9C to provide for consolidated enforcement and modification proceedings. Where a motion is made to reduce payments, it will be made in the county of venue. Where a motion is pending for enforcement of the judgment in a county other than the county of venue, both motions will be heard in the county of venue.

Before transferring the motion for enforcement to the county of venue, the Court in the county where the payments are being made which has before it the motion to enforce will fix the arrearages either by certification of the probation office or, if the amount is contested, by a hearing in which the amount is determined. Thereafter, both motions will be heard in the county of venue by a judge who has before him the entire file and who probably has knowledge of the background of the case.

By this provision we believe the litigants will receive a decision by a court better informed of the background of the case and therefore more apt to be just. It would be possible to transfer venue from the original county of venue to the collection county. However, in the majority of cases the ex-wife is still residing in the county of venue. She has the right to apply to increase payments or to receive other relief. If venue were transferred to the collection county an undue burden would be placed upon her to travel to the collection county. She normally is not in as good a financial condition the ex-husband is in. We did not feel it fair to place this travel burden upon her.

In addition, even if the venue were transferred, there would be no chance of having the motions come before a judge who knew the background of the case. For a number of years the complaint has been made that matrimonial actions are unfairly treated because the fees are higher than in other civil actions. The filing fee in a civil action is sixty

dollars. This applies to matrimonial actions. In addition to this sixty dollars, N.J.S.A. 2A:34-16 provides that before any matrimonial action is approved for trial, the plaintiff or counterclaimant must pay to the Clerk of the Superior Court for the use of the State an additional fifty dollars and where the action is contested an additional sixty dollars. We think that fair minded persons can agree that this is an unfair tax on the matrimonial litigants.

An important problem caused by the requirement of a hearing fee is that cases are not listed for trial until the fee is paid. The matrimonial judges do not have any cases in their inventory for which a fee has not been paid. We suspect that on occasion a fee is purposely not paid for tactical reasons. This creates an interference with the prompt disposition of the matrimonial cause. The additional fee was justified when the statute was passed to support the Standing Master's Office which, at that time, was a vital element in the approval of matrimonial actions for trial. The Standing Master's Office has now been abolished and matrimonial cases are approved pro forma by the Clerk of the Superior Court upon the payment of the additional fee.

Matrimonial fees, that is the additional fee in fiscal year 1977, produced for the State one million one hundred and twenty-nine thousand five hundred and sixty dollars. The Civil Practice Committee received a report from the Clerk which outlined the amount of monies received for all filing fees. As I read the figures, this amount is about eight and a half million dollars. Of that amount, over two million dollars was received from the thirty dollar fee for filing an answer.

In considering the additional fee for matrimonial cases, the Committee also considered the filing fee for answers where a litigant merely wishes to defend against the claim made. It seemed to us that a litigant should not be charged merely to defend himself. We felt, however, that where a litigant is sued and wishes to assert a request for affirmative relief either by way of counterclaim, cross-claim, claim for contribution or third party complaint, that litigant should pay the same filing fee as the plaintiff had to pay. We realized that provision would have to be made to raise approximately the same amount of money for the State by filing fees as is now raised when an extra fee is charged for matrimonial actions and a fee is charged for all answers.

After reviewing the figures prepared by the Clerk, we came to the conclusion that to create the same amount of money for the State and yet not unduly burden matrimonial litigants or persons who merely want to defend themselves, legislation should be adopted changing the filing fees to provide that for filing a complaint in a civil action and for filing an

answer containing a request for affirmative relief, the filing fee should be ninety dollars. This fee would not apply to special proceedings such as Probate, change of name and alike. If a defendant files an answer containing a request for affirmative relief in the form of a counterclaim and pays the ninety dollar fee, he could thereafter file a cross-claim or third party complaint without paying an additional fee.

In short, both plaintiff and defendant seeking affirmative relief pay the same amount. The amount which we suggest should create for the State the same revenues that the State now receives for answers where there is no request for affirmative relief and for the additional fee in matrimonial actions.

We urge that the legislature be requested to adopt legislation to implement the Committee's suggestion. We ask support for these recommendations.

Thank you, Judge Clapp.

JUDGE CLAPP: Thank you, Judge Lane, for a very excellent presentation.

Larry Cutler, you were going to speak in opposition to the change in summary judgments by divorce, for divorce, and I'm going to ask if you will also state in few words our proposal and the alleged reasons for it and then state your reasons against it. Thank you.

MR. CUTLER: Thank you, Judge Clapp.

The proposal that is before the Supreme Court now is for a new Rule 4:79-12 which would permit divorce by affidavit on summary judgment in a limited number of cases. In those cases in which there were no children, A; B, there were no claims for alimony or equitable distribution of property and C, those cases in which there was no agreement sought to be incorporated in the judgment of divorce.

Now, I think if you think about those limitations they are really quite limited because it really eliminates the poor because they usually have children and it really eliminates the rich because they usually have money. The only other people that are left, really, are kids in their twenties, maybe, who have an apartment, who have two cars, who have two jobs and have modern America miscellaneous furniture and they are just going to go their separate ways. The rule represents a drastic change in the practice.

The case of Manion which I think was decided by Judge Susser basically reiterated the standard and the method that we have used since the beginning in New Jersey and that is by requiring affirmative testimonial proof.

It seems to me that by limiting the divorce by affidavit to such a small group, we are now drastically changing

3. R. 4:64-7. In Rem Tax Foreclosure

The Committee recently received a request to review R. 4:64-7 for recommendation of further amendment. This matter has been carried to the Committee's agenda for next year.

4. Matrimonial Trial Approval Fees

There has been persistent and growing dissatisfaction with the special trial fee which is levied only in matrimonial actions. This fee of \$50 or \$60, set forth in R. 4:79-2, reflects the statutory mandate of N.J.S.A. 2A:34-16. Various proposals have been submitted concerning the elimination of the matrimonial trial fee which, today, is actually an anachronism relating back to the functions of the Standing Master's office prior to our divorce law revision in 1971, wherein careful scrutiny of all divorce complaints was required in order to protect the State's interest in the preservation of marriage.

It is recognized that this matrimonial trial fee generates substantial revenue which redounds to the general benefit of the New Jersey populace. Nevertheless, it is deemed inequitable to levy a special charge on a particular class of litigants. Consequently, the Committee endorses the concept of increasing filing fees for all civil complaints by amendment to N.J.S.A. 22A:2-6, -12, -13 and -15 in order to replace, to some extent, the revenues which would be lost by eliminating the matrimonial trial fee. Any such amendment should necessarily be accompanied by a repeal of N.J.S.A. 2A:34-16.

While considering the general question of filing fees, the Committee also endorsed the concept that it is inequitable for a defendant to be charged a filing fee merely to be able to defend himself in court. The Committee recommends the elimination of the answer fee and the imposition of a filing fee, equal to the fee charged for complaints, only for pleadings which request affirmative relief.

It should be noted that the above proposals have also received the endorsement of the New Jersey Matrimonial Trial Judges' Association.

Since this matter will require in-depth analysis of the fees presently generated by civil litigation, it has been continued for further consideration next year.

Respectfully submitted,

Peter A. Buchsbaum
Robert Carter
Clive S. Cummis
Laurence J. Cutler
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George Y. Schoch
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Stephen L. Skillman
Robert H. Steedle
Howard Stern
Richard H. Thiele, Jr.
Alfred C. Clapp, CHAIRMAN

DATED: April 7, 1978