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FILE NO. S-1394

JUDICIAL SYSTEM:
Mailing Fee - Small
Claims Cases

Honorable Stephen L. Spomer
State's Attorney
Massac County
P. O. Box 526
Metropolis, Illinois 62960

Dear Mr. Spomer:

I have your letter wherein you state:

" * * *

In a small claims case not in excess of \$1,000.00 some of the Circuit Clerks in the First Judicial Circuit are charging fees pursuant to Statute and Supreme Court Rule 284 as follows: Filing Fee \$10.00, Library Fee \$1.00 and Mailing Fee when mailing is requested in lieu of personal service \$2.25. The total to that point is \$13.25.

In some other counties of the circuit the clerks are making like charges plus an additional charge of \$2.00 pursuant to section 27.1(o) (2)

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of 'AN ACT to revise the law in relation to clerks of courts'. (Ill. Rev. Stat. 1977, ch. 25, par. 27.1(o)(2).) In this instance the total costs to a like point is \$15.25.

* * *

You ask for my opinion as to which procedure is correct.

In 1963 the General Assembly amended the Civil Practice Act (Ill. Rev. Stat. 1977, ch. 110, par. 1 et seq.) to authorize the Supreme Court to establish rules for the creation of simplified procedures for small claims. This was part of a movement, which began in other parts of the county to solve the problem of the potential litigant whose claim was so small that any judgment he might receive would be substantially diminished by attorneys' fees and court costs. In 1962, service by mail in small claims cases was authorized by statute in several jurisdictions. (See, e.g., Deering's California Civil Practice Act Annot. § 117(c); 27 Minn. Stat. Annot. § 491.03.) This simplified method for the service of process was proposed for use in small claims cases in Illinois. See, Robinson, a Small Claims Division for Chicago's New Circuit Court, 44 Chi. Bar. Rec. 421 (1963).

Section 2 of the Civil Practice Act (Ill. Rev. Stat. 1977, ch. 110, par. 2) provides:

"(1) The Supreme Court of this State has power to make rules of pleading, practice and procedure for the circuit, Appellate and Supreme

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Courts supplementary to but not inconsistent with the provisions of this Act, and to amend the same, for the purpose of making this Act effective for the convenient administration of justice, and otherwise simplifying judicial procedure, and power to make rules governing pleading, practice and procedure in respect of small claims, including service of process in connection therewith. Unless otherwise indicated by the text, references in this Act to rules are to rules of the Supreme Court.

* * *

In a note contained in Smith-Hurd Illinois Annotated Statutes, Albert E. Jenner, Jr. and Phillip W. Tone explained the rationale behind the placement of the amendatory language.

* * *

* * * It was believed not only that a simplified procedure for handling small claims was desirable but that the desired simplicity and flexibility would better be attained by rule of court. The added language was deliberately placed after the words 'supplementary to but not inconsistent with the provisions of this Act' to make it clear that the legislature contemplated procedure in small claims cases would differ materially from the procedure specified elsewhere in the Civil Practice Act and Supreme Court Rules for other cases. * * *

* * *

(Emphasis in original.)

Supreme Court Rule 284 (Ill. Rev. Stat. 1977, ch. 110A, par. 284) expressly provides for service of process in small claims cases and fixes the clerk's fee therefor. It states in part:

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"Unless otherwise provided by circuit court rule, at the request of the plaintiff and in lieu of personal service, service in small claims may be made within the county as follows:

(a) For each defendant to be served the plaintiff shall pay to the clerk of the court a mailing fee of \$2.25, and furnish to the clerk an original and one copy of a summons containing an affidavit setting forth the defendant's last known mailing address, and a copy of the complaint in addition to the original. The original summons shall be retained by the clerk.

(b) The clerk forthwith shall mail to the defendant, at the address appearing in the affidavit, the copy of the summons and complaint, certified mail, return receipt requested. * * *

* * *

(Emphasis added.)

Section 27.1(o) (2) of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1977, ch. 25, par. 27.1(o) (2) provides:

"The fees of the Clerk of the Circuit Court in all counties having a population of 1,000,000 inhabitants or less shall be paid in advance, except as herein provided, and shall be as follows:

* * *

(o) Mailing Notices and Writs

* * *

(2) For all writs or notices the Clerk is required to mail by certified or registered mail, the fee will be \$2 plus cost of postage.

* * *

If fees are charged under both section 27.1(o) (2) and Supreme Court Rule 284, the claimant would be forced to

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pay a fee of \$4.25 over and above the actual cost of postage. Such an interpretation would have the perverse effect of imposing a larger mailing fee for the small claims plaintiff trying to effect service than for an ordinary litigant trying to mail a writ or a notice. This would conflict with the purpose of the small claims procedure to keep costs low. It should be clear that charges cannot be made under both provisions.

This leaves the question whether the fee imposed by Supreme Court Rule 284 or section 27.1(o)(2) should be charged. As noted previously, the small claims procedure was designed to be materially different from other procedures. It is the only one in which the circuit is authorized to serve process by certified mail. When the procedure was authorized in 1963, the only provision under which the circuit clerk could charge a fee for mailing was Rule 284. There was no statute authorizing it. An argument could be made that the enactment of section 27.1(o)(2) was a limitation on the Supreme Court's authority to make rules for small claims under the Civil Practice Act, however, I need not consider such an argument for the legislature has created a special principle of statutory construction by which legislation

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which might limit or affect rules adopted in accordance with the Civil Practice Act must be interpreted. Section 4 of that Act provides, in part:

" * * *

No statute hereafter enacted shall be construed to limit or affect the provisions of this Act or the rules adopted in accordance herewith, unless expressly declared to supersede or take precedence of designated provisions thereof or designated rules adopted pursuant thereto."

Applying this principle, it must be noted that section 27.1(o) (2) does not specifically apply to small claims cases; nor does it specifically apply to service of process by mail. Public Act 79-1445, which amended the fee schedule of circuit clerks, deleted a specific reference to charges for "each summons, writ or other process" served by certified mail and substituted "all writs and notices". While in one sense the service of process does provide notice, the words "process" and "notice" are not synonymous. Sturges & Burn Mfg. Co. v. Unit Construction Co. (1917), 207 Ill. App. 74.

Since section 27.1(o) (2) does not expressly declare that it supersedes or takes precedence over Rule 284, nor

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expressly makes itself applicable to the service of process in small claims cases, it may not be construed so as to limit or affect Rule 284.

It is, therefore, my opinion that circuit court clerks should not impose the fee set out in section 27.1(o) (2) when they are requested to effect service via certified mail pursuant to Supreme Court Rule 284.

Very truly yours,

A T T O R N E Y G E N E R A L