

MEMORANDUM

OCTOBER 16, 2003

TO: COUNTY CLERKS
CHIEF CLERKS OF SUPREME COURT AND COUNTY COURT

FROM: MICHAEL COLODNER

SUBJECT: IMPLEMENTATION OF THE NEW CIVIL FILING FEES IN THE
SUPREME AND COUNTY COURTS

THE LEGISLATURE RECENTLY ENACTED LEGISLATION, EFFECTIVE JULY 14, 2003, RAISING ALMOST ALL CIVIL FEES, AND CREATING SOME NEW FEES, IN THE SUPREME AND COUNTY COURTS. CHAPTER 62 OF THE LAWS OF 2003. A COPY OF THOSE SECTIONS OF THE LEGISLATION AFFECTING CIVIL FEES IN THESE COURTS IS ATTACHED. MY EARLIER MEMORANDUM OF JUNE 23, 2003, DISCUSSED A NUMBER OF ISSUES CONCERNING THE IMPLEMENTATION OF THE NEW FEES FOR THE FILING OF MOTIONS, CROSS-MOTIONS, STIPULATIONS AND VOLUNTARY DISCONTINUANCES, AND IT ASKED FOR YOUR INPUT IN IDENTIFYING ADDITIONAL AREAS THAT NEEDED CLARIFICATION. THIS MEMORANDUM IS BASED ON THE MANY SUBSEQUENT COMMENTS AND QUESTIONS RECEIVED FROM ALL OVER THE STATE, AND IT INCORPORATES THE EARLIER MEMORANDUM IN SUMMARIZING IN ONE DOCUMENT HOW TO HANDLE THOSE ISSUES THAT HAVE REQUIRED CLARIFICATION.

A. FEES FOR FILING OF MOTIONS AND CROSS-MOTIONS

THE NEW \$45 FEE FOR THE FILING OF MOTIONS AND CROSS-MOTIONS IN THE SUPREME COURT AND COUNTY COURT IS IMPLEMENTED BY SECTION 25 OF PART J OF THE LEGISLATION. SECTION 25 AMENDS CPLR 8020(A) AS FOLLOWS:

(A) PLACING CAUSE ON CALENDAR. FOR PLACING A CAUSE ON A CALENDAR FOR TRIAL OR INQUEST, ONE HUNDRED TWENTY-FIVE DOLLARS IN THE SUPREME COURT AND COUNTY COURT; EXCEPT THAT WHERE RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS REQUIRE THAT A REQUEST FOR JUDICIAL INTERVENTION BE MADE IN AN ACTION PENDING IN SUPREME COURT OR COUNTY COURT, THE COUNTY CLERK SHALL BE ENTITLED TO A FEE OF [SEVENTY-FIVE] NINETY-FIVE DOLLARS, PAYABLE BEFORE A JUDGE MAY BE ASSIGNED PURSUANT TO SUCH REQUEST, AND THEREAFTER, FOR PLACING SUCH A CAUSE ON A CALENDAR FOR TRIAL OR INQUEST, THE COUNTY CLERK SHALL BE ENTITLED TO AN ADDITIONAL FEE OF [TWENTY-FIVE] THIRTY DOLLARS, AND NO OTHER FEE MAY BE CHARGED THEREAFTER PURSUANT TO THIS SUBDIVISION; EXCEPT THAT THE COUNTY CLERK SHALL BE ENTITLED TO A FEE OF FORTY-FIVE DOLLARS UPON THE FILING OF EACH MOTION OR CROSS MOTION IN SUCH ACTION. HOWEVER, NO FEE SHALL BE IMPOSED FOR A MOTION WHICH SEEKS LEAVE TO PROCEED AS A POOR PERSON PURSUANT TO SUBDIVISION (A) OF SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER.

THE FOLLOWING ARE IMPLEMENTATION GUIDELINES FOR THE NEW STATUTORY LANGUAGE: "A FEE OF FORTY-FIVE DOLLARS UPON THE FILING OF EACH MOTION OR CROSS MOTION IN SUCH ACTION":

1. "MOTION OR CROSS-MOTION"

IN GENERAL, ANY FILING DESIGNATED AS A "MOTION" OR "CROSS-MOTION" GENERATES THE \$45 FEE. THIS INCLUDES MOTIONS COMMENCED BY NOTICE OF MOTION OR ORDER TO SHOW CAUSE, AND MOTIONS COMMENCED ON NOTICE OR EX PARTE. AS LONG AS PAPERS ARE IDENTIFIABLE FROM THE COVER DOCUMENTS AS MOTIONS OR CROSS-MOTIONS, THEY REQUIRE THE FEE EVEN IF A FORMAL NOTICE IS NOT ATTACHED. WHERE A MOTION OR APPLICATION HAS BEEN DETERMINED BY THE COURT, THE ACT OF SUBMITTING AN ORDER OR JUDGMENT FOR SIGNATURE BY THE JUDGE IS NOT A REQUEST THAT GENERATES ANOTHER FEE; IT IS PART OF THE SAME APPLICATION THAT ALREADY GENERATED THE FEE.

2. "UPON THE FILING"

THE \$45 FEE APPLIES "UPON THE FILING" OF EACH MOTION. THIS PRESUPPOSES THAT THE MOTION IS IN WRITING. MOTIONS MADE ORALLY BEFORE THE COURT ARE NOT SUBJECT TO THE FEE. THIS WILL EXCLUDE FROM THE FEE THOSE MOTIONS MADE DURING THE COURSE OF A TRIAL WITHOUT A WRITTEN APPLICATION, NOTWITHSTANDING THAT BRIEFS MAY BE SUBMITTED TO THE COURT.

THE FILING OF A MOTION CONTAINING MULTIPLE REQUESTS FOR RELIEF IN A SINGLE DOCUMENT REQUIRES ONLY A SINGLE \$45 FILING FEE.

WHEN EXIGENT CIRCUMSTANCES REQUIRE A PARTY TO SUBMIT MOTION PAPERS TO A COURT BEFORE FILING IN THE COUNTY CLERK'S OFFICE, THE COLLECTION OF THE REQUIRED FEE SHOULD TAKE PLACE AT THE FIRST POSSIBLE OPPORTUNITY THEREAFTER. WHILE CPLR 8020 SPEAKS TO FEES "PAYABLE IN ADVANCE," THAT LANGUAGE APPLIES WHEN THE COUNTY CLERK "RENDERS A SERVICE," AND THE COUNTY CLERK DOES NOT RENDER ANY SERVICE UNTIL THE PAPERS ACTUALLY ARE FILED WITH THE COUNTY CLERK.

3. "IN SUCH ACTION"

THE \$45 FEE APPLIES TO THE FILING OF MOTIONS "IN SUCH ACTION," WHICH REFERS BACK TO THE PREAMBLE OF CPLR 8020 APPLYING THAT SECTION "IN AN ACTION PENDING IN SUCH COURT." THE NEW FEE THUS APPLIES ONLY TO MOTIONS MADE AFTER THE COMMENCEMENT OF THE ACTION. IT SHOULD NOT BE APPLIED TO APPLICATIONS OR MOTIONS THAT (A) SERVE TO COMMENCE THE ACTION, (B) ACCOMPANY PLEADINGS THAT COMMENCE THE ACTION, OR (C) REQUIRE THE ASSIGNMENT OF AN INDEX NUMBER (AND THE PAYMENT OF AN INDEX NUMBER FEE) REGARDLESS WHETHER A FORMAL PLEADING IS FILED.

EXAMPLES:

A. THE FILING OF A NOTICE OF PETITION AND PETITION IN A SPECIAL PROCEEDING, WHILE IN THE NATURE OF AN APPLICATION TO THE COURT, SERVES TO COMMENCE THE SPECIAL PROCEEDING, GENERATES ITS OWN INDEX NUMBER, AND IS NOT SUBJECT TO THE MOTION FILING FEE. A RESPONSIVE MOTION OR CROSS-MOTION TO DISMISS A PETITION IN A SPECIAL PROCEEDING (AS OPPOSED TO THE SUBMISSION OF RESPONDING PAPERS WITHOUT A MOTION) REQUIRES THE PAYMENT OF THE \$45 FEE.

B. THE FILING OF A REQUEST FOR A PRELIMINARY INJUNCTION (WHETHER BY NOTICE OF MOTION OR BY ORDER TO SHOW CAUSE), WHEN FILED TOGETHER WITH THE PLEADINGS THAT GENERATE THE ISSUANCE OF AN INDEX NUMBER, IS NOT SUBJECT TO THE MOTION FILING FEE. A MOTION FOR A PRELIMINARY INJUNCTION FILED AFTER THE ISSUANCE OF AN INDEX NUMBER IN THE CASE WOULD BE SUBJECT TO THE MOTION FEE.

C. AN EX PARTE APPLICATION FOR PRE-ACTION DISCLOSURE (CPLR 3102(C)) DOES NOT REQUIRE PAYMENT OF THE MOTION FILING FEE BECAUSE THIS FILING, WHILE NOT COMMENCING AN ACTION OR PROCEEDING, GENERATES ITS OWN INDEX NUMBER. ANY MOTION MADE THEREAFTER WOULD BE SUBJECT TO THE FEE.

D. AFTER AN INDEX NUMBER HAS BEEN ASSIGNED TO A CASE, THE SUBSEQUENT FILING OF A MOTION ACCOMPANIED BY A REQUEST FOR JUDICIAL INTERVENTION REQUIRES PAYMENT OF BOTH THE \$75 RJI FEE AND THE \$45 MOTION FEE.

GENERAL RULE: IF AN INDEX NUMBER IS ASSIGNED (AND FEE COLLECTED) IN A SINGLE FILING TRANSACTION THAT INCLUDES A MOTION, NO MOTION FEE IS COLLECTED. ALL SUBSEQUENT MOTIONS ARE SUBJECT TO THE MOTION FEE.

THE \$45 FEE ALSO APPLIES TO POST-JUDGMENT MOTIONS. AS LONG AS THE MOTION IS MADE USING THE SAME INDEX NUMBER OF THE COMPLETED CASE, IT IS CONSIDERED TO BE MADE "IN SUCH ACTION."

B. APPLICATION OF THE MOTION FILING FEE IN CERTAIN PRACTICE AREAS

1. UNCONTESTED MATRIMONIALS

THE PLACEMENT OF AN UNCONTESTED MATRIMONIAL ON THE CALENDAR DOES NOT REQUIRE PAYMENT OF THE \$45 MOTION FILING FEE. PLAINTIFFS GENERALLY ARE REQUIRED TO FILE ONLY A NOTE OF ISSUE TO HAVE THE CASE PLACED ON A CALENDAR SO THAT A JUDGE MAY ISSUE A FINAL JUDGMENT OF DIVORCE. THIS REQUIRES JUST THE PAYMENT OF A NOTE OF ISSUE FEE, AND IT OBTVIATES THE NEED FOR A PLAINTIFF TO MAKE A MOTION TO HAVE THE JUDGMENT GRANTED. SHOULD ANY MOTIONS BE MADE, SUCH AS A REQUEST FOR A CALENDAR PREFERENCE, THEY WOULD REQUIRE PAYMENT OF THE FILING FEE.

2. MORTGAGE FORECLOSURES

WHERE FORECLOSED PROPERTY IS SOLD BY A REFEREE APPOINTED BY THE COURT, THE PROCESS NORMALLY GENERATES TWO MOTIONS: (1) THE MOTION FOR A REFEREE TO BE APPOINTED AND, (2) AFTER THE REFEREE COMPUTES THE AMOUNT OWED AND FILES A REPORT WITH THE COURT, THE MOTION TO CONFIRM THE REFEREE'S REPORT, ENTER A JUDGMENT OF FORECLOSURE, AND SELL THE PROPERTY. EACH OF THESE TWO MOTIONS REQUIRES A MOTION FEE. THE FEE SHOULD BE COLLECTED IN (2) EVEN WHERE THE PAPERS ARE SUBMITTED TO THE COURT WITH AN ORDER FOR THE JUDGE'S SIGNATURE AND WITHOUT A FORMAL MOTION, BECAUSE THIS SUBMISSION IS IN FACT A MOTION FOR THE JUDGE TO DIRECT ALL THE ACTS CONTAINED IN THE ORDER.

3. GUARDIANSHIP PROCEEDINGS

GUARDIANSHIP PROCEEDINGS UNDER ARTICLE 81 OF THE MENTAL HYGIENE LAW ARE TREATED THE SAME AS ANY OTHER PROCEEDING FOR PURPOSES OF COLLECTION OF THE MOTION FEE. EVEN IF A NOT-FOR-PROFIT CORPORATION IS APPOINTED AS THE GUARDIAN, A MOTION FEE STILL MUST BE PAID FOR ANY APPLICATION MADE TO THE COURT DURING THE COURSE OF THE GUARDIANSHIP. THE ONE EXCEPTION IS THE COMMUNITY GUARDIANSHIP PROGRAM IN NEW YORK CITY, WHERE THE THREE NOT-FOR-PROFIT CORPORATIONS THAT PARTICIPATE IN THE PROGRAM ARE ACTING ON BEHALF OF THE CITY OF NEW YORK, AND EACH IS TREATED AS A FEE-EXEMPT CITY AGENCY FOR FEE PURPOSES.

ONE SPECIAL SITUATION IN GUARDIANSHIP PROCEEDINGS: A MOTION TO SETTLE A FINAL ACCOUNT GENERATES TWO ORDERS - AN ORDER SETTLING THE FINAL ACCOUNT AND A SUBSEQUENT ORDER DISCHARGING THE GUARDIAN. THESE TWO ORDERS ARE PART OF THE SAME MOTION TO SETTLE THE ACCOUNT, AND ONLY A SINGLE MOTION FEE SHOULD BE COLLECTED.

APPLICATIONS TO THE COURT BY COURT EXAMINERS (PERSONS APPOINTED BY THE APPELLATE DIVISIONS TO REVIEW THE ACCOUNTS OF GUARDIANS) DO NOT REQUIRE MOTION FILING FEES, AS THE COURT EXAMINERS ARE AN ARM OF THE COURT ITSELF.

4. QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO'S)

QUALIFIED DOMESTIC RELATIONS ORDERS SUBMITTED AFTER THE GRANTING OF THE JUDGMENT OF DIVORCE DO NOT REQUIRE THE PAYMENT OF THE \$45 MOTION FEE. THE SUBMISSION OF THESE ORDERS IS DIRECTED BY THE JUDGMENT OF DIVORCE, AND THE COURT'S SIGNING THE ORDERS IS MERELY AN IMPLEMENTATION OF THE JUDGMENT.

5. INFANTS' COMPROMISES

A MOTION TO SETTLE AN ACTION COMMENCED ON BEHALF OF AN INFANT REQUIRES THE PAYMENT OF THE \$45 MOTION FEE. SUBSEQUENT APPLICATIONS TO THE COURT TO WITHDRAW MONEYS NEEDED FOR THE INFANT'S SUPPORT OR EDUCATION ARE IN THE NATURE OF MOTIONS TO THE COURT AND EACH REQUIRES THE PAYMENT OF THE \$45 MOTION FEE.

6. DEFAULT JUDGMENTS

AN APPLICATION TO THE CLERK PURSUANT TO CPLR 3215(A) TO ENTER A JUDGMENT IN AN ACTION WHERE THE DEFENDANT HAS DEFAULTED IS A MOTION REQUIRING THE \$45 FILING FEE.

C. FEES FOR FILING OF STIPULATIONS OF SETTLEMENT AND VOLUNTARY DISCONTINUANCES

SECTION 25 OF PART J OF THE LEGISLATION ADDS A NEW SUBDIVISION (D) TO CPLR 8020 THAT CREATES A \$35 FEE FOR THE FILING OF A STIPULATION OF SETTLEMENT OR A VOLUNTARY DISCONTINUANCE IN THE SUPREME COURT AND COUNTY COURT. AMENDMENTS TO CPLR RULE 2104 AND CPLR RULE 3217 (SECTIONS 28 AND 29 OF THE LEGISLATION RESPECTIVELY) REQUIRE THAT THESE DOCUMENTS BE FILED BY THE DEFENDANT. NEVERTHELESS, THE FEE SHOULD BE COLLECTED BY THE COUNTY CLERK REGARDLESS OF WHICH PARTY FILES THE DOCUMENTS. THE PARTIES CAN SORT OUT RESPONSIBILITY FOR PAYMENT AMONG THEMSELVES. SECTION 202.28 OF THE UNIFORM CIVIL RULES FOR THE SUPREME AND COUNTY COURTS HAS BEEN AMENDED TO CONFORM TO THESE NEW STATUTORY PROVISIONS.

STIPULATIONS OF SETTLEMENT ARE SUBJECT TO THE \$35 FILING FEE EVEN IF THEY ARE "SO-ORDERED" BY THE COURT. CPLR RULE 2104 INCORPORATES INTO THE CATEGORY OF STIPULATIONS THOSE THAT ARE "REDUCED TO THE FORM OF AN ORDER AND ENTERED."

IF A SINGLE STIPULATION OR NOTICE OF DISCONTINUANCE RESOLVES MULTIPLE CASES (E.G., IN MULTIPLE TAX CERTIORARI PROCEEDINGS), ONLY ONE \$35 FEE IS COLLECTED. NEW SECTION 8020(D) PROVIDES THAT "ONLY ONE SUCH FEE SHALL BE CHARGED FOR EACH NOTICE, STIPULATION OR CERTIFICATE FILED PURSUANT TO THIS SUBDIVISION."

WHERE A STIPULATION OF SETTLEMENT IS FILED AS PART OF THE PAPERS IN AN UNCONTESTED MATRIMONIAL ACTION, THE \$35 FILING FEE APPLIES.

IF THERE ARE ANY ADDITIONAL QUESTIONS ON THESE NEW FEES, PLEASE CALL AMY
VANCE OF COUNSEL'S OFFICE AT (212) 428-2150.

HM

ATTACH.

CC: HON. JONATHAN LIPPMAN
HON. JOSEPH J. TRAFICANTI
HON. JOAN B. CAREY
HON. ANN T. PFAU
ADMINISTRATIVE JUDGES
AMY VANCE
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