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To: Senate Committee on Judiciary

From: Robert Gallimore, Principal Research Analyst

Re: Docket Fee Overview for Federal and Kansas Courts

This memorandum provides an overview of docket fees in federal and Kansas court systems.

Federal Docket Fees

Prior to 1841, court clerks, commissioners, district attorneys, and marshals were compensated by keeping fees collected from private litigants (the predecessors to docket fees). In 1841, Congress set a maximum compensation for these officials and required them to return all fee revenue above that amount to the Treasury. In response to concerns that courts were instituting unnecessary proceedings and requirements to generate more fees, Congress in 1853 enacted a uniform fee schedule for all court officers. This fee schedule set a docket fee of \$20 and an appellate fee of \$5, as well as a variety of other fees for court services.¹

In the mid-twentieth century, filing fees for district court cases were codified at 28 U.S.C.A. § 1914, which now provides for a \$350 filing fee and any additional fees "as are prescribed by the Judicial Conference of the United States."² (The Judicial Conference consists of the Chief Justice, the chief judge of each circuit, the chief judge of the Court of International Trade, and a district judge from each judicial circuit.) The Judicial Conference has promulgated a number of other fees, including document filing, certification, reproduction, and attorney admission, among others. A list of current fees for the federal District of Kansas may be found at <http://www.ksd.uscourts.gov/clerks-office-fees/>. A schedule of fees for the federal court system generally may be found at <http://www.uscourts.gov/services-forms/fees>.

28 U.S.C.A. § 1911 allows the Supreme Court to "fix the fees to be charged by its clerk." The fee for docketing a case on a petition for writ of *certiorari* is \$300. 28 U.S.C.A. § 1913 directs the Judicial Conference to prescribe fees and costs for the courts of appeals. The docket fee for an appeal is \$500.

Kansas Docket Fees

In the 1860s, Kansas established a statutory fee schedule for district court clerks for more than 20 tasks, including docketing a cause (\$0.20), filing a paper (\$0.05), and

1 History of federal docket fees taken from *Federal Judiciary Appropriations, 1792-2010*, compiled by Daniel S. Holt, Federal Judicial Center, 2012.

2 The Judicial Conference has added a \$50 administrative fee for filing a suit to the statutory \$350 fee, bringing the total filing fee to \$400.

administering an oath (\$0.10). L. 1862, ch. 99, § 2. The statute directed that the clerk of the Supreme Court "shall receive such fees as shall from time to time be allowed him by said court." L. 1862, ch. 99, § 21. By 1899, the clerk of the Supreme Court, by statute and caselaw, was allowed the same fees as district court clerks, as well as a *per diem* during the term as set by the Court. See *Harrison v. Masonic Mut. Ben. Soc.*, 61 Kan. 134 (1899).

As of 1868, plaintiffs who were not residents of the county in which the action was brought were required, before commencing an action, to provide a sufficient surety for costs, who had to be a resident of the county and approved by the clerk. G.S. 1868, ch. 80, § 581. By 1875, this requirement had been expanded to require a bond for costs be filed by any plaintiff, in an amount to be set by the clerk for non-resident plaintiffs and \$15 for resident plaintiffs. L. 1875, ch. 121, § 1.

By 1897, statute allowed district court clerks to retain a certain amount of the fees charged and required them to remit the excess to the county general fund. L. 1897, ch. 131, § 8. By 1913, clerks' salaries were set by statute and they were required to remit their fees to the county treasury for deposit in the county general fund. L. 1913, ch. 197, § 8.

The general statutory scheme setting specific clerks fees and requiring deposit of a bond or security for costs before summons would be issued continued until 1974, when the specific fees related to entering a new action or documents within an action were deleted from statute and the requirement for security for costs was changed to a docket fee in the amount of \$35. L. 1974, ch. 168, §1, §3. In 1978, as part of the state's assumption of the costs of non-judicial court personnel, legislation was enacted requiring the county treasurer, beginning July 1, 1981, to remit to the state treasurer all revenues received in the county general fund from court costs and fees. L. 1978, ch. 108, § 3. Subsequent legislation adjusted the distribution of docket fee revenue and it is now distributed to various county and state funds pursuant to KSA 2015 Supp. 20-362.

District court docket fees in civil cases are currently set by statute at \$173, with the Supreme Court authorized to impose an additional charge, not to exceed \$22 per docket fee, to fund the costs of non-judicial personnel. KSA 2015 Supp. 60-2001. More than 50 docket fees are set by statute, including those for civil cases, probate cases (KSA 2015 Supp. 59-104), criminal proceedings (KSA 2015 Supp. 28-172a), juvenile proceedings (KSA 2015 Supp. 38-2314), and child in need of care proceedings (KSA 2015 Supp. 38-2215).

Current statute prohibits the collection of any fee for court procedures except for those authorized by statute. See, e.g., KSA 2015 Supp. 28-177.

2014 HB 2338 created a statutory filing fee of \$145 for appeals to the Court of Appeals or the Supreme Court. (Appellate docket fees had previously been set by Supreme Court rule.) The bill also created a motion for summary judgment filing fee of \$195, which was changed to a dispositive motion filing fee by 2015 HB 2005.

More information on changes made to docket fees since 1974, as well as information on recent docket fee revenue and disbursement, may be found in the article "District Court Docket Fees" in the 2016 *Kansas Legislator Briefing Book*, which is attached to this memorandum. The article may also be accessed at <http://www.kslegresearch.org/KLRD-web/Publications/2016Briefs/2016/P-1-DistrictCourtDocketFees.pdf>. (The article also addresses the revenue from and distribution of fines, penalties, and forfeitures, which is beyond the scope of this memorandum.)

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P-1
District Court Docket
Fees

P-2
Kansas Laws to
Eliminate Deficit
Spending

P-3
Local Demand
Transfers

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Kansas Legislator Briefing Book 2016

State Finance

P-1 District Court Docket Fees

Kansas has had a uniform system of district court docket fees since 1974. The original docket fees were \$35 for civil cases and varying amounts for criminal cases, depending upon the nature of the crime. From 1984 to 1995, local law libraries could charge differing library fees that were in addition to statutorily set docket fees, which caused docket fees to be non-uniform.

In 1996, the Legislature enacted legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, modifications of child support orders, or changes in visitation. The 2006 Legislature enacted legislation specifying that only the Legislature can establish fees or moneys for court procedures including docket fees, filing fees, or other fees related to access to court procedures.

The 2006 Legislature raised docket fees for four purposes: to provide additional funding for the State General Fund associated with an approved judicial salary increase, to provide an increase in funding for the Kansas Law Enforcement Training Center Fund, to provide funding for the Kansas Judicial Council's judicial performance evaluation process, and for the Child Exchange and Visitation Centers Fund.

The 2009 Legislature raised docket fees to provide funding for the first phase of a statewide non-judicial personnel salary adjustment and raised the docket fee in criminal cases by \$1 to fund a \$1 increase to the Prosecuting Attorneys' Training Fund.

The 2014 Legislature redirected docket fees from state agencies to the Judicial Branch starting in FY 2014. Starting in FY 2015 docket fees are deposited in three places; the Judicial Council, the Electronic Filing Management Fund, and the Judicial Branch Docket Fee Fund. Through FY 2017 the Electronic Filing Management Fund will receive the first \$3.1 million in clerk's fees. From FY 2018 forward, that amount will be reduced to \$1.0 million for annual maintenance and upkeep.

The Office of Judicial Administration collected \$29.0 million in district court docket fees for the State Treasury in FY 2015.

Fines Penalties and Forfeitures. In FY 2015, the Judicial Branch collected \$17.2 million in fines, penalties, and forfeitures. A portion of funds collected, 33.6 percent, is earmarked for assisting victims of crime, alcohol, and drug abuse programs, children's services, and other law

enforcement-related activities. The remainder is transferred to the State General Fund for general operations.

Other Fees. In addition to docket fees, the Judicial Branch also imposes other fees and assessments on individuals who use the judicial system. The Judicial Branch collected \$7.6 million in other fees and assessments in FY 2015. These fees support law enforcement related activities within the Kansas Bureau of Investigation, Office of the

Attorney General, Board of Indigents' Defense Services, and the Department of Corrections.

The 2009 Legislature authorized the Supreme Court to enact a new surcharge in FY 2009. The surcharge is approved on an annual basis by the Legislature. In FY 2011, the Legislature extended the surcharge through FY 2012 and increased the surcharge by 25.0 percent. The FY 2014 Legislature abolished the Surcharge Fund and directed that all docket fees generated by the Surcharge be deposited in the Docket Fee Fund.

Name of Fund	Administering Authority	FY 2015 Actual		FY 2016 Est.	
		Percent of Fees	Revenue to Fund (Est.)	Percent of Fees	Revenue to Fund (Est.)
Docket Fees					
Electronic Filing Management Fund	Chief Justice, Kansas Supreme Court	N/A	\$3,100,000	N/A	\$3,100,000
Judicial Council Fund	Judicial Council	0.99%	183,149	0.99%	172,161
Judicial Branch Docket Fee Fund	Chief Justice, Kansas Supreme Court	99.01%	25,752,915	99.01%	24,798,332
State General Fund	Kansas State Legislature	0.00%	0	0.00%	0
<i>Docket Fee Total</i>		<i>100.00%</i>	<i>\$29,036,064</i>	<i>100.00%</i>	<i>\$28,070,493</i>
Fines, Penalties and Forfeitures					
Crime Victim's Compensation Fund	Attorney General	10.94%	\$1,876,441	10.94%	\$1,876,441
Crime Victim's Assistance Fund	Attorney General	2.24%	384,207	2.24%	384,207
Comm. Alcoholism and Intoxication Programs Fund	Department for Aging and Disability Services	2.75%	471,683	2.75%	471,683
Dept of Corr. Alcohol and Drug Abuse Treatment Fund	Department of Corrections	7.65%	1,312,137	7.65%	1,312,137
Boating Fee Fund	Department of Wildlife, Parks and Tourism	0.16%	27,443	0.16%	27,443
Children's Advocacy Center Fund	Attorney General	1.10%	188,673	1.10%	188,673
EMS Revolving Fund	Emergency Medical Services Board	2.28%	391,068	2.28%	391,068
Trauma Fund	Secretary of Health and Environment	2.28%	391,068	2.28%	391,068
Traffic Records Enhancement Fund	Department of Transportation	2.28%	391,068	2.28%	391,068
Criminal Justice Information Systems Line Fund	Kansas Bureau of Investigations	2.91%	499,126	2.91%	499,126
State General Fund	Kansas State Legislature	66.40%	11,389,003	66.40%	11,389,003
<i>Fines, Penalties and Forfeitures Total</i>		<i>100.00%</i>	<i>\$17,152,113</i>	<i>100.00%</i>	<i>\$17,152,113</i>

Name of Fund	Administering Authority	FY 2015 Actual		FY 2016 Est.	
		Percent of Fees	Revenue to Fund (Est.)	Percent of Fees	Revenue to Fund (Est.)
Other Fees and Assessments					
State General Fund	Various	Fee	188,721	Fee	177,645
Law Enforcement Training Center Fund	Various	Fee	2,175,597	Fee	2,203,159
Marriage License Fees	Various	Fee	1,075,544	Fee	1,065,556
Correctional Supervision Fund	Various	Fee	952,507	Fee	951,463
Drivers License Reinstatement Fees	Various	Fee	879,943	Fee	878,805
KBI-DNA Database Fees	Various	Fee	645,720	Fee	620,001
Community Corrections Supervision Fee Fund	Various	Fee	543,081	Fee	498,561
Indigent Defense Services Application Fee	Various	Fee	474,797	Fee	459,481
Indigent Defense Services Bond Forfeiture Fees	Various	Fee	542,125	Fee	267,572
Other (Law Library, Court Reporter, Interest, etc.)	Various	Fee	117,371	Fee	157,562
Other Fees and Assessments Total			\$7,595,406		\$7,279,805
Grand Total of all Fees, Fines, Penalties and Forfeitures Assessed			\$53,783,583		\$52,502,411

For more information, please contact:

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