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# Survey and Analysis of Court Filing Fees

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*In late 1975 the National Center staff prepared a study of court filing fees for the Missouri Office of State Courts Administrator. The study, a part of a larger project to determine the extent and effect of court costs on litigation, produced some interesting and useful information that other courts have since requested for similar studies or projects in their own states.*

*Because of the continuing interest in court filing fees, the National Center conducted a new and more thorough survey of court filing fees in the summer of 1977. This article summarizes the major findings of the earlier study and presents the complete results of the recent survey. It also contains an analysis of the traditional and practical reasons for the endurance of filing fees in state court systems and a discussion of the major issues that should be considered when developing or altering policies related to filing fees.*

Although the extent of judicial participation in shaping the social order and resolving private disputes has greatly increased during the past few decades, adequate financing of state court operations has never become a reality. Judges and court administrators have engaged in difficult and frequently unsuccessful competitions in the budget process to obtain money to provide court services and facilities. The result has often been justice rationed or delayed, or at worst denied.<sup>1</sup>

The growing interest in court filing fees ("docket fees") as a source of revenue is a natural result of this situation. Available figures indicate that filing fees can generate substantial amounts of money, although considerable variation exists from state to state. For example, during the 1976 fiscal year, the Idaho courts produced total revenues of \$4.5 million, of which approximately \$757,000, or 17 percent, came from filing fees.<sup>2</sup> In the 1975-76 fiscal year, Colorado courts collected about \$2.24 million from civil docket fees, or 44 percent of the more than \$5 million in court-generated revenues.<sup>3</sup> On the other hand, only 2.5 percent of the \$15.4 million of revenue produced by the District of Columbia courts in 1976 came from filing fees.<sup>4</sup> The point is that filing fees can be, at the very least, a significant source of revenue, and that the issues surrounding them are therefore important to legislatures, judges, court administrators, and the public.

## PURPOSES AND USES OF FEES

The use of filing fees in this country had its origin in the English tradition of compensating court officials from fees charged to litigants.<sup>5</sup> Since state and local governments started paying the salaries of judges and court clerks, however, two other justifications for the use of filing fees have been emphasized. The first is that filing fees deter frivolous litigation, thereby controlling court caseloads. Recent research has shown, however, that filing fees do not deter litigation because they are only a small part of the overall cost of litigation. Other court costs and expenses related to litigation have a more important impact on the decision to file a lawsuit. The Alaska Judicial Council, for example, observed in a 1974 policy paper on court fees:

One commonly recognized purpose of the filing fee is . . . for limiting crank claims and frivolous lawsuits which might otherwise be filed. . . . But the legitimacy of the claim that the fee screens frivolous suits is considerably more problematic. Certainly the working of such a price mechanism in no way distinguishes between the meritorious contract claims of less value than the filing fee, and the flippant claim of the litigious neurotic. . . . Perhaps for most people the more active deterrent to filing of frivolous lawsuits is the cost of an attorney.<sup>6</sup>

A second reason for levying filing fees is that they represent a proper charge for the use of civil courts by individuals seeking a private benefit. "User" fees have, in fact, become increasingly popular with local governments. After the property tax, they are the second most productive source of local government revenue.<sup>7</sup>

User fees can be an effective substitute for local non-property taxes. As applied to courts, however, this approach has generated a conflict of opinion. Filing fees either become part of a state's general fund or are earmarked by the state legislature for specific purposes related in one degree or another to the administration of justice (for example, judges' retirement, law libraries, court reporters, legal aid, police training, driver education, and night courts). Some observers view these fees as essentially another form of taxation, borne mainly by those who can afford to pay it, since filing fees are often waived for indigents. One critic of this view of filing fees has said:

[T]he court system as a social institution must be conceived as a "public service" in terms of costs and revenues. Like police protection, ambulance services and fire protection, the courts require such a broad economic base of support that they cannot be conceived as potentially self-sufficient. The cost of mobilizing fire equipment and trained firefighters is far in excess of what any citizen could afford to pay, or would be expected to pay if his house caught fire. Similarly, the cost of a court facility, a judge, the clerks of court, etc., could never be offset by the users of the process alone. Indeed, the basic reason for having a community-wide tax base is to provide the revenues necessary to finance services which no one uses regularly but everyone wants available, and services which no one can afford but everyone needs the potential benefit of. Hence, . . . [this] policy discussion does not presume in every case that users should pay their own way, that the system should necessarily be revenue pro-

ducing, or that fees should necessarily be commensurate with benefits received.<sup>8</sup>

Others reject the "private benefit" rationale for the existence of filing fees in much stronger terms. For example:

No one would ask the Executive Branch or the Legislative Branch to justify itself as a self-liquidating institution. The people are perfectly content to pay for those services by way of taxes. Why should not the people be equally entitled to the services of the Judicial Branch of government without being required to pay fees every time they turn around or to take a pauper's oath in order to get into the courthouse?<sup>9</sup>

Another objection to the "private benefit" rationale is that civil cases may provide public benefits at the same time they redress private wrongs or may, in fact, be brought in the public interest to begin with. And other observers have objected to filing fees because, in their view, the activity of doing justice may take on the appearance of a revenue-producing commercial enterprise.

Despite the existence of these viewpoints, filing fees remain a fairly uncontroversial tradition, probably because they are usually low in amount (compared with other costs of litigation) and are paid only on the rare occasion that a citizen files a lawsuit. The prevalent attitude is that filing fees represent a legitimate charge levied by legislatures to raise revenue to support the increased activities of government, even though the fees have only a small relationship to the total cost of administering justice. An example of this outlook was expressed in a 1973 study of the Wisconsin courts. The report concluded that:

— Persons who make use of civil courts for the purpose of settling private disputes assume a very small per-

centage of the total cost of court operation.

— Court fees have constituted a declining percentage of the payment for operating civil courts because many of the fees have not been revised to offset the spiraling costs of court operations.

— In most cases the court fees constitute only a small fraction of a litigant's expenses, and when court costs are compared with the expense of legal representation, it is clear that even a substantial increase in user fees would not be a burden in most cases.

— A number of state organizations, including local counties, strongly support greater use of "user fees" in financing the state's court system.

— It is reasonable to expect that those who avail themselves of the dispute settlement machinery of the state bear a fair share of the cost. In order to maintain that goal, fees should undergo revision at least biennially.<sup>10</sup>

The study also suggested that because of the public interest in having private disputes settled in an orderly and peaceful manner, the remainder of the total cost of civil court operation should be financed through use of general tax revenues. Also, increases in user fees should be subject to appropriate provisions for waiver of these costs for indigents.<sup>11</sup>

### Setting the Filing Fee Amounts

In a much less complicated era, courts developed itemized fee schedules that attempted to relate fees to the actual costs of services by charging separately for each of the many different court transactions. Fees and costs in the federal courts before 1944, for example, were charged on a basis similar to many state courts, with a \$5 fee for docketing

the case, a \$1 fee for transferring the case to the printed calendar, a 25¢ fee for entering a continuance, a 25¢ fee for filing a motion, and so forth.<sup>12</sup>

Since the 1940s, the federal courts and many state and local courts have consolidated the variety of smaller charges into a single or "flat" fee. Many states that charge flat fees also maintain itemized lists of additional fees or "step" costs; however, these lists are less detailed than those used by courts many years ago.

Some courts have instituted variable fee schedules that provide for unequal charges for different types of cases. The same court may charge different fees for personal injury cases, divorces, and probate matters, for example, although the initial paperwork for each type of case may be substantially the same. In addition, some states have successfully implemented different types of graduated fee schedules, which usually provide that the filing fee increases as the claim or money judgment increases.

During the course of legislative hearings that preceded the federal change-over to a flat-fee system, the director of the Administrative Office of the U. S. Courts suggested two standards that are generally considered as desirable attributes of a schedule of fees for court services: *uniformity*, so that the same fees are charged in all districts, and *simplicity*, to keep bookkeeping difficulties to a minimum.<sup>13</sup> Within this framework, there are several rational alternative ways to set the actual filing fee amounts. One method for civil cases is to average the most frequently imposed filing fees to arrive at the base filing fee for all civil cases. The new fee might be based on traditional amounts but would continue to be readjusted, perhaps as frequently as every other year, using some type of cost-of-living index.

Another approach is to establish a

filing fee that is representative of the actual minimum cost to the courts to commence litigation in the courts of the state. Additional costs beyond those calculated as part of the filing fee are then incurred at no additional charge as part of the services considered essential to good government.<sup>14</sup> While computing the minimum cost of gaining access to the forum is not an easy task, the effort at least may result in filing fees that have some rational basis.

The following method might be used to compute a less arbitrary minimum filing fee. The first step is to detail the procedure for opening a typical new case file. This step requires an analysis of the procedures of the court clerk's office for making docket entries, sending out notices, collecting fees, and any other essential tasks. Next, the usual costs of personnel time (including fringe benefits) and supplies needed to accomplish each task must be determined. Indirect costs (overhead recovery) can be computed at a percentage of personnel costs. The final step in the process requires adding all costs to arrive at a filing fee. If the resulting fee seems excessive, courts or legislatures can then determine what percentage of the fee would be more equitable for the public.

The effects of increasing or decreasing filing fees have never been determined. While several studies have concluded that court usage would increase as the total cost of litigation is reduced,<sup>15</sup> similar findings have not been made with regard to the impact of changes in docket fees. And, while flat filing fees vary greatly among state courts, there are no studies indicating that the amount of litigation varies as a result of differences in the filing fees charged.

Filing fees, as we have observed, are a small part of the overall cost of litigation, and it seems likely that these

can be raised or lowered within a relatively broad range with no significant impact on the number of cases filed. Obviously there is a threshold at which the total cost of litigation negates the potential benefits to the litigants; however, as long as fees remain small in comparison with total costs or potential return, they should have a minimal effect on that threshold. An exception to this observation may be that increasing or decreasing filing fees will have an impact on case volume in those courts in which the filing fee is the only or major cost that litigants must pay, such as in small claims courts where lawyers are not permitted.

### Survey Results

Present systems of civil filing fees vary greatly from state to state. Several states have fees to commence litigation by the filing of a complaint as low as \$1. Such fees are misleading, however, because most states with low filing fees still use itemized fee schedules in which additional fees are charged for each new pleading or filing in a case (each procedural "step" in the judicial process requiring a document incurs a charge).

Many states have eliminated step costs in favor of flat filing fees. These fees range from \$6 to \$70. States with low flat filing fees will often have additional fees for other types of pleadings, but fee schedules usually will not be as detailed or complicated as those for states using step costs. States with high fees will often have eliminated most other types of basic fees. For example, the \$70 Kentucky fee includes all of the minor fees usually associated with civil cases. There are additional charges, however, for filing a third party complaint, certifications, providing copies, attestations, issuing orders of attachment or garnishment after judgment, juries, service of process,

publishing notices, and "additional costs in cases requiring extraordinary services" as determined by the court's discretion.<sup>16</sup>

Table 1 is a complete list of the civil filing fees for state courts of general jurisdiction. The list was compiled from the responses to a questionnaire mailed to all state court administrators in August 1977. Most of the states responded to the survey, but, for those that did not, the information was obtained from state codes.

California, Colorado, Idaho, Illinois, and Virginia use graduated fee schedules. Table 2 is a summary of graduated civil filing fees used by these courts.

The survey was primarily designed to gather filing fee information for courts of general jurisdiction; however, it also produced fragmentary data about civil filing fees in courts of limited jurisdiction, which are reproduced in Tables 3 and 4. The filing fees in courts of limited jurisdiction are, as might be expected, one-third to one-half of the fees in courts of general jurisdiction. A more precise comparison of fees in courts of general and limited jurisdiction is impossible with the information available through this survey.

After the survey was completed, we decided to include information about civil filing fees in small claims courts. Table 5 is a list of civil filing fees for a

selected number of these courts. Although very incomplete when compared with the other tables, the list does serve to point out the diversity of filing fees for small claims.

### Graduated Fee Schedules

Whether a graduated fee schedule should be used in a court is an important policy question for judges and legislators. A graduated fee system typically levies higher filing fees when the potential resulting benefit, that is, the amount the plaintiff seeks to recover, exceeds some predetermined limit. As shown in Table 2, five states have graduated fee schedules in their courts of general jurisdiction. Graduated fees are more common for courts of limited jurisdiction, and Table 4 indicates that eight states use very simple graduated fee schedules in these courts.

Some states have adopted a graduated or "variable" fee schedule in which filing fees vary for different types of civil actions. Maryland District Court, for example, imposes a graduated fee in contract and tort actions based on the amount in controversy, and different or variable fees for replevin, summary ejectment, and other civil actions.<sup>17</sup>

Graduated filing fee structures may initially appear attractive because they allow for increased court revenues and can be developed on a rational basis.

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One author, for example, writing in a national tax journal, has suggested that fee structures can be made more "lucrative" by charging for abnormal use of services or by imposing special charges for services not normally supplied to the general public.<sup>18</sup> The widespread use of graduated filing fee schedules, however, may create an image of the courts as revenue producers that could eventually work to their detriment in the state budgeting process.

### INDIGENT ACCESS TO THE COURTS

Whatever the amounts of fees or types of systems used, potential litigants must not be barred from courts because of prohibitive filing fees where use of the courts is the sole remedy available. In *Boddie v. Connecticut*,<sup>19</sup> the leading case on this point, the United States Supreme Court held unconstitutional a state statute requiring payment of fees for filing and service of process before a divorce action could be commenced in the Connecticut courts. In this class action, the indigent petitioners were effectively barred from court since Connecticut had no statute permitting waiver of fees for indigent litigants, and the Connecticut courts did not accept the common-law theory that the courts have inherent power to waive fees.

Crucial to the court's ruling was the fact that marriage and divorce were regulated by the state. In *Boddie*, the parties had no alternative way to dissolve the marriage if denied entry to the courts because of a filing fee they could not pay. The Supreme Court's ruling was narrowly limited to that fact pattern: "Thus we hold only that a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amend-

ment, preempt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so."<sup>20</sup>

This limited approach has been maintained. Just two months after deciding *Boddie*, the Supreme Court denied certiorari in five other cases involving access to the courts. In 1973, the Supreme Court reversed a federal district court decision invalidating a referee's fee in voluntary bankruptcy. In that case, *United States v. Kras*,<sup>21</sup> the court held that *Boddie* did not control, because access to the courts was not the sole source of relief available to bankrupts. As recently as June 1975, a federal district court in New York upheld a fee schedule adopted by the New York State Legislature in 1973 that set higher court fees for the five counties of New York than for counties elsewhere in the state.<sup>22</sup> The legislation had been challenged in a class action on the grounds that the fee schedule violated equal protection rights because of its disproportional impact on residents of metropolitan New York City. Citing a 1973 United States Supreme Court decision that upheld in-state geographical differences in school financing methods, the New York District Court decision upheld the territorial classification. "(A)ll persons suing in the courts of New York City pay the same fees whether they are citizens of New York City or some other state."<sup>23</sup> The court further pointed out that while the plaintiffs "showed that there were substantially more poor people in New York City than in the counties outside New York City . . . there was no particularized evidence of the impact of the fees on these persons."<sup>24</sup>

There is no way to predict whether the court would have decided the case differently if the plaintiffs had shown the fees created an adverse impact on the poor. For indigents, the filing fee is

frequently the major cost of litigation because their attorneys are usually provided at no charge. Generally, relief for the poor who cannot afford filing fees takes the form of motion to the court to waive the fee under some type of *in forma pauperis* statute. The federal government and about half of the states provide by statute for fee waiver for indigents.<sup>25</sup> In the states where this form of relief is not available, clear procedures for allowing access to the court frequently do not exist.

### EARMARKING FILING FEES

The practice of earmarking filing fees for specific purposes is prevalent among state courts.<sup>26</sup> It is receiving more attention as local governments encounter difficulties in raising adequate revenues. While some states are considering eliminating all filing fee "add-ons" used to support judicial retirement or other court programs,<sup>27</sup> other states have recently revised or implemented earmarking programs.<sup>28</sup>

Although the origin of earmarking is unclear, it probably developed as a result of the historical practice of using filing fees to pay court officials for their work. It is also possible that earmarking resulted from inadequate financing of the activities of the judicial branch by state and local funding agencies. State and local officials are usually sensitive to increasing taxes; earmarking court revenues is a way to accomplish court and court-related funding without appearing to increase taxes. One author has characterized this approach as "monetary buck-passing engaged in by the legislature in distributing the burden of expense of administering the judicial branch."<sup>29</sup>

The importance of earmarking to recipient agencies cannot be ignored. Earmarking allows the regular legislative budgeting process to be circum-

vented and, while the practice may serve the needs of the recipient of the funds, it also prevents regular review of expenditures for the services provided. Earmarking also becomes an attractive alternative to courts and other government agencies that too frequently find themselves near the bottom of the list of legislative priorities for funding from general tax revenues. Yet courts that are considering seeking legislative approval of earmarking or that already have earmarked fees might consider some of the potential drawbacks involved.

One criticism of earmarking is that it can seriously complicate administration.<sup>30</sup> Earmarking can easily become part of "piecemeal financing procedures that erode court efficiency when multiple court units must seek operating funds from an even larger number of funding units, and funds available for improvements vary from court to court."<sup>31</sup> This is especially true where earmarked fees in populous districts will result in higher revenue than in smaller districts.

In addition, earmarking strengthens the impression that courts are sources of revenue for general government operations. Of course, the very existence of filing fees means that courts are revenue sources. Down-playing this function, however, is likely to increase the chances of securing improved funding during the budgeting process and enhancing the public image of the courts as halls of justice. The latter is particularly true where the funds are earmarked for a purpose that may have little public appeal.

The practice of earmarking filing fees also raises significant legal issues. One author has concluded that: "If the [earmarked] item of expense would be incurred regardless of whether any particular case were being tried, then it is a general expense of administration of

the courts and is not to be taxed as 'costs' against individual litigants."<sup>32</sup>

In support of his position, the author cites a 1953 opinion of the Oklahoma Criminal Court of Appeals in which the court held that a statute providing for the assessment of a two-dollar fee for a policemen's pension and retirement system fund was unconstitutional in that the assessment was not a necessary item of cost incident to the actual disposition of the case. The court, in reaffirming a prior decision to the effect that court costs taxed in criminal proceedings must bear a true relation to the expenses of the prosecution, said,

We regret we are unable to hold otherwise, but the law does not permit us to so hold. However, if the funds thus collected are necessary as a supplement for the maintenance of the "Police Pension Fund" as provided, it is the duty of the legislature to provide an adequate and legal means for raising such funds. The reason is obvious, that under our inadequate salary schedules for police officers, aside from personal integrity, pensions are one of the best inducements for long, honest, and efficient service as a peace officer. Lawful means for providing such funds are available to the legislature, but encumbering the administration of justice as a tax-gathering agency is not one of them. Our Constitution provides the right of justice shall be administered without sale, denial, delay, or prejudice. Unreasonable costs encumbrances should not be permitted to shackle the feet of justice. We cannot open the door to such in the administration of criminal jurisprudence.<sup>33</sup>

The author goes on to attack judicial retirement funds as one of the more ob-

*continued on page 38*

Supreme Court of Arizona; prepared by the American Judicature Society.

<sup>32</sup>These states are: Georgia, Idaho, Iowa, Minnesota, Missouri, New Jersey, New Mexico, Oregon, South Dakota, Tennessee, and Wyoming.

<sup>33</sup>See, Report of the "Judicial Inquiry Board, State of Illinois," December 31, 1975. For a background account of the resistance of the Illinois bench to the disciplinary procedures see, "Recent Cases," *Harvard Law Review* 84 (February 1971): 1002-1012.

<sup>34</sup>Michigan Judicial Tenure Commission, 1972 Annual Report.

<sup>35</sup>Wisconsin Judicial Commission, 1972 Annual Report.

<sup>36</sup>Edward Schoenbaum, ed., *Resource Materials for 5th National Conference of Judicial Disciplinary Commissions* (Chicago: American Judicature Society, 1976): 134-5.

<sup>37</sup>*Stevens v. Commission on Judicial Qualifications*.

<sup>38</sup>Note, "Remedies for Judicial Misconduct and Disability: Removal and Discipline of Judges," *New York University Law Review* 41 (March 1966): 175.

### Court Filing Fees *cont'd.*

jectionable ways filing fees can be earmarked.

[T]he benefit derived from the efficient administration of justice is not limited to those who utilize the system for litigation, but is enjoyed by all those who would suffer if there were no such system—the entire body politic. It makes no more sense to burden litigants with paying for judicial retirement than it would to install a turnstile at the door to the governor's office and to pay his salary with admission fees charged to those who seek his counsel. If no one were to utilize the court system in any given terms, the judges' salaries would still have to be paid, and the retirement system would still require funding.<sup>34</sup>

It is also suggested that the constitutional infirmity in assessing costs not truly related to the conduct of a particular case is that the assessment represents a tax that the courts should be constitutionally barred from collecting. The main case cited as authority for this position is a 1951 Oklahoma case in which the court ruled that the collection of one dollar as costs for the parole fund was not a necessary expense incident to the prosecution and trial of criminal cases and that it was repugnant to the concept of separation of powers.<sup>35</sup> Although the case involved a cost assessed in a criminal case, not a civil case filing fee, the court's reasoning in arriving at its conclusion clearly suggests a potential legal pitfall in extensive earmarking of filing fees.

### CONCLUSIONS

Many types of monetary charges are imposed by courts, usually pursuant to statutory requirements or guidelines. While fines, forfeitures, and penalty

assessments are charges related to criminal cases, costs and fees are typically associated with civil cases, although some criminal courts also assess court costs against defendants. Fees are charged for a variety of court services, including case filing, probating estates, marriages, support payment, transcript preparation, and recording of titles. However, in order to simplify the issues related to court fees, this article has considered only the case filing or docket fees that are charged in all state courts to initiate civil lawsuits.

Filing fees can be classified or characterized by the methods used to compute the total fee. Itemized fees or step costs, which are charges computed for each separate paper processed or function performed by the court, have been used by state and local courts since the founding of the nation. The trend in most states, however, is to consolidate itemized fees into a single filing or flat fee, with additional costs or fees assessed only for extraordinary court services. A very few courts now use graduated fee schedules in which the filing fees vary according to the amount claimed or, in one state, the amount of judgment. Even fewer states use variable systems in which different types of cases are assessed different fees. Filing fees vary greatly throughout the country, and it is not unusual to find differences in fee structures in similar courts within individual states.

The use of filing fees in state courts in this country is based on traditions inherited from English courts where all court functionaries were compensated from fees collected for their services. As in England, fee system courts in this country gradually decreased, and most if not all judges are now paid by state or local governments.<sup>36</sup> However, the use of filing fees in courts continues to be looked upon as a way to offset the costs of maintaining judicial systems.

Several arguments are frequently used to support filing fee increases. The most common is that filing fees are necessary to deter frivolous litigation or to channel different types of cases to appropriate courts or other nonjudicial dispute resolution forms, such as counseling, mediation, or arbitration. Also heard is the argument that litigants should be charged fees for the private benefits they derive from the court system. And some courts and legislatures have used fee increases as the justification for obtaining needed improvements in judicial services or increasing judicial compensation.

It is doubtful that filing fees now serve to deter litigation. Filing fees are small in comparison to the overall costs of litigation, and it is likely that they can be raised or lowered within a relatively broad range with no significant impact on the number of cases filed. However, increasing or decreasing fees may have an impact on case volume in those courts where filing fees are the most significant costs that litigants pay, such as small claims courts where lawyers are not permitted or bankruptcy courts in which fees are not waived. Filing fees have also been used to channel cases to different courts within the same jurisdiction. This practice has been criticized as being unresponsive to public needs because different income classes may not have access to the same courts, or litigation for lower income groups may in fact be diverted away from the judicial system.

Court systems provide private as well as public benefits, and it is difficult, if not impossible, to separate the two types of benefits so that a "fair share" of court expenses can be assessed against litigants in the form of filing fees. Certainly justice is a general governmental function that benefits those who may not ever be litigants.<sup>37</sup> Rather than trying to increase or readjust fees

on the basis of private benefits, it is better to acknowledge that filing fees represent charges levied by legislative bodies to raise revenue to offset the costs of operating courts, and that they have only marginal relationships to the actual costs of administering justice. From this perspective, filing fees are more like sales taxes than user fees; if you purchase certain goods, you will be required to pay taxes for the general support of the government. It is the same with fees. "It may be assumed that the administration of justice is a state function to be furnished at the state expense, but that the use made of the court by individuals is a proper source of revenue, not related to the cost of administration, but simply designed to bring money into the state treasury."<sup>38</sup>

Although courts should not be looked upon as sources of revenue, filing fees are and will likely continue to be significant sources of income for local and state governments. Judicial decisions have upheld the right of courts to charge fees, as long as access is not completely barred to those who cannot pay them, especially where use of the courts is mandatory. With increasing frequency, filing fees are waived for indigents, so the effect of larger filing fees probably will be felt most by lower-to middle-income groups with relatively modest claims.

Given the durability of filing fees, legislatures should use more rational bases to determine the proper amount of filing fees. There are several alternatives for computing fees, any of which would provide a more consistent and logical basis than many existing arbitrary methods. Obviously, filing fees could be established on the same basis as taxes, that is, by considering the revenue needed to maintain or increase government services and calculating the amount that must be produced

from all tax sources to meet the service requirements. However, this method could be easily abused and lead to the appearance of rationing justice.

Filing fees could be set by averaging the most frequently occurring fees and periodically readjusting the resulting average fee, using some type of cost-of-living index. Although the initial average fee might be based on traditional amounts, a base fee would be established that would assure local and state governments that court-generated revenues would continue to be readjusted on a regular basis.

Filing fees can also represent the actual minimum cost to local or state governments to commence litigation in their court systems. This method of computing fees would require an analysis of the various steps involved in commencing a lawsuit and an allocation of cost to each step of the work. Once determined, it would be easy to revise the fee on a regular basis.

Graduated fee schedules have been developed that tie fees to amounts claimed or recovered. These schedules can be related to net worth or income of complainants on a basis comparable to current income tax schemes, and fees can be varied according to the nature of the legal action. Alternatives to filing fees might also be explored, such as requiring that the fee be paid out of the amount recovered.

All of these proposals involve complicated policy questions. However, filing fees should be uniform throughout a state regardless of their method of computation. They should be simple and easy to administer, and a single filing fee is preferable to charging different filing fees for various court procedures. Certainly the system for charging fees should be logical, and circular fees, that is, fees assessed of government agencies which will eventually flow back to the same government units

through the courts, should be discouraged.

The appropriate method of allocating court revenues must involve a balancing of the goals of the financing plan and the practical and political realities of the state involved. Judges and court administrators should be on guard for proposals to increase filing fees that would improperly limit public access to the courts or negatively affect the image of the judicial system. In this regard, the practice of earmarking court revenues for programs totally unrelated to courts is inappropriate. Moreover, the disadvantages and potential constitutional problems associated with earmarking strongly suggest that this practice should be discouraged by courts.

Court fee schedules that emphasize revenue production aspects of filing fees should also be avoided. The courts should be treated as essential public services, and expenditures necessary for judicial improvements should not be dependent upon increasing court revenues.

The survey demonstrated that there are no ideal fee systems. Each state has and will continue to develop its own method for setting filing fees. Court fees have existed for so long that there is a tendency to regard them as fundamental and immutably bound up with our legal institutions.<sup>39</sup> Perhaps it is time to look more critically at the use of court fees. The appearance of justice is important, and any system of fees that detracts from the proper administration of justice should be re-evaluated by legislatures and courts. □

#### NOTES

<sup>39</sup>The Alabama Judicial System, for example, recently faced a serious crisis when the legislature restricted judicial expenditures to the amount of revenues collected by the courts through fines and fees. Before the situation was resolved, civil

jury cases had to be delayed. *The Denver Post*, May 31, 1977.

<sup>2</sup>Administrative Office of the Courts, *1976 Annual Report of the Idaho Courts* (Boise, Idaho), p. 17.

<sup>3</sup>State of Colorado, Office of the State Court Administrator, *Annual Statistical Report of the Colorado Judiciary*, September 28, 1976, p. 33.

<sup>4</sup>An additional \$372,659 was raised by filing fees to the Court of Appeals, and \$13.7 million, or about 98 percent, of the total fees was attributable to traffic fines. An adjustment for these amounts would substantially change the civil fee percentage. The Joint Committee on Judicial Administration in the District of Columbia and the Executive Officer, *1976 Annual Report of the District of Columbia Courts*, p. 95.

<sup>5</sup>However, the early English law had no system of costs or court fees, and statutory fees first came into existence in the thirteenth century. "Costs have existed so long that there is a general disposition to regard them as fundamental, as immutably bound up with our legal institutions. This is a mistake; costs are not established by our constitutions, they are not the product of common law, they exist solely and entirely as creatures of statutes." Reginald Heber Smith, *Justice and the Poor*, 3rd ed. (Montclair, New Jersey: Paterson Smith, 1972), p. 20.

<sup>6</sup>Alaska Judicial Council, *Report on Policy Considerations for Court Fee Structures* (Anchorage, Alaska: February 1974), p. 2.

<sup>7</sup>Arthur D. Lynn, Jr., "Financing Modernized and Unmodernized Local Government in the Age of Aquarius," *Utah Law Review* 1971, p. 30.

<sup>8</sup>Alaska Judicial Council, *supra* note 6, p. 2. For a more detailed discussion of the concept of public-private benefits, we recommend Phillip Spector's article cited in the bibliography.

<sup>9</sup>Judge Justin Miller, quoted in American Bar Foundation, *Public Provision for Costs and Expenses of Civil Litigation* (Chicago: June 1966), pp. 20-21.

<sup>10</sup>Citizens Study Committee on Judicial Organization, *Report to Governor Patrick J. Lucey* (Madison, Wisconsin: January 1973), pp. 104-105.

<sup>11</sup>*Ibid.*, p. 105.

<sup>12</sup>"It is difficult to say with any degree of exactness how much it costs the taxpayer for the disposition of each case, and any effort to do so must of necessity be a mere approximation. Again, figures to compute even a rough guess are not conveniently available for any but the federal system . . ." Leland L. Tolman, "The Taxpayer's Stake in the Courts," *Annals of the American Academy of Political and Social Science*, Vol. 287, pp. 132-133.

<sup>13</sup>U. S. Congress, House Committee on the Ju-

diary, *Fees and Costs in the United States Courts*. Hearings before Subcommittee No. 4 of the Committee on the Judiciary. Public Document No. 20, 78th Congress, First Session, November 1943.

<sup>14</sup>This does not mean that jury fees, witness fees, service of process fees, and other fees that vary with a case should not continue to be charged separately. This is a separate policy question that we have not addressed in this report.

<sup>15</sup>See American Bar Foundation, *supra* note 9, p. 9; and Phillip L. Spector, "Financing the Courts Fees: Incentives and Equity in Civil Litigation," *Judicature* 58 (February 1975), p. 330.

<sup>16</sup>Kentucky Revised Statutes 23A.200 (2).

<sup>17</sup>Lawrence H. Sharf and Frederic M. Shulman, *How Much Should We Charge for Justice? Fees and Statutory Costs Paid by Litigants in New York State* (New York: National Center for State Courts, New York State Court Financing Project, November 1977).

<sup>18</sup>Alice John Vandermeulen, "Reform of a State Fee Structure: Principles, Pitfalls, and Proposals for Increasing Revenue," *National Tax Journal* 17 (December 1964), p. 402.

<sup>19</sup>*Boddie v. Connecticut*, 401 U.S. 371 (1971).

<sup>20</sup>*Ibid.*, p. 383.

<sup>21</sup>*United States v. Kras*, 409 U.S. 434 (1973).

<sup>22</sup>*Maues v. Goldin*, 400 F. Supp. 23 (1975). U. S. District Court, Eastern District Court of New York.

<sup>23</sup>*Ibid.*, p. 30.

<sup>24</sup>*Ibid.*, p. 25.

<sup>25</sup>"Indigent Access to Civil Courts: The Tiger is at the Gates," *Vanderbilt Law Review* 26 (1973), p. 29. See also American Bar Foundation, *supra*, pp. 11-12.

<sup>26</sup>American Judicature Society, *Financing Massachusetts Courts* (Chicago: American Judicature Society, 1974), p. 81.

<sup>27</sup>California Legislature. Joint Committee on the Structure of the Judiciary. *Minutes of the Advisory Commission*, September 9, 1975.

<sup>28</sup>For example, Utah enacted a Judicial Retirement Act in 1971 that provided for an earmarked fee on all complaints, counter claims, and other selected pleadings. Utah Code Annotated 49-7a-15. Also, when South Dakota recently implemented a new judicial article creating a unified court system, the legislature provided specific allocations of court revenues. Public Administration Services, *The Implementation of the South Dakota Unified Judicial System* (Chicago: 1974), pp. 9-41.

<sup>29</sup>Richard F. Hayse, "Kansas Court Costs: The Quality of Mercy is Strained," *Washburn Law Journal* 9 (1969), p. 95.

<sup>30</sup>American Judicature Society, *supra* note 26, p. 82.

<sup>31</sup>Michigan Supreme Court, *State Financing and Management Reorganization of the Michigan Court System* (Lansing, Michigan: February 1973), p. 6.

<sup>32</sup>Hayse, *supra* note 29, p. 94.

<sup>33</sup>*Ex parte Miller*, 263 P.2d523 (1953).

<sup>34</sup>Hayse, *supra* note 29, pp. 96-97.

<sup>35</sup>*Ex parte Coffelt*, 228 P.2d 199 (1951).

<sup>36</sup>Justice of the Peace Courts have been among the last to discontinue compensating judges with filing fees. In *Tumey v. Ohio*, 273 U.S. 510 (1927), the U. S. Supreme Court declared unconstitutional fee compensation systems for justices of the peace where payment depended upon a finding of guilt. Despite this ruling, fee compensation still exists in some states — for example, Arkansas and Mississippi — though payment is made based on the number of cases regardless of the justice's finding.

<sup>37</sup>David J. Saari, "An Overview of Financing Justice in America," *Judicature* 50 (May 1967), pp. 299-300.

<sup>38</sup>Kenneth Dayton, "Costs, Fees, and Expenses in Litigation," *Annals of the American Academy of Political and Social Science*, Vol. 167 (May 1933), pp. 44-45.

<sup>39</sup>Reginald Heber Smith, *Justice and the Poor*, 3d. ed. (Montclair, New Jersey: Paterson Smith, 1972), p. 21.

**Table 1**  
**Civil Filing Fees for Courts of General Jurisdiction**  
**(Compiled September 1977)**

State	Filing Fee	Answer Fee	State	Filing Fee	Answer Fee
Alabama	35.00	—0—	Mississippi		
Alaska	50.00	—0—	Chancery Court	2.00	.05 <sub>p</sub>
Arizona	30.00	20.00	Circuit Court	1.00	.10 <sub>q</sub>
Arkansas	20.00 <sup>a</sup>	—0—	Missouri	25.00	—0—
California*			Montana	20.00	10.00
Five major counties <sup>b</sup>	49.50	34.50	Nebraska	30.00	—0—
	-55.50 <sup>c</sup>	-40.50 <sup>d</sup>	Nevada	32.00	25.00
All other counties	29.00	14.00	New Hampshire	14.00 <sup>r</sup>	—0—
	-54.00 <sup>c</sup>	-39.00 <sup>r</sup>	New Jersey	60.00	30.00
Colorado*	40.00	20.00	New Mexico	20.00 <sup>s</sup>	.50
Connecticut	50.00	—0—	New York		
Delaware			Counties within NYC	50.00	—0—
Superior	1.00 <sup>g</sup>	1.00	Counties outside NYC	25.00	—0—
Chancery	.50 <sup>h</sup>	.50	North Carolina	34.00	—0—
District of Columbia	20.00	—0—	North Dakota	15.00	—0—
Florida	22.00 <sup>i</sup>	—0—	Ohio	7.50 <sup>i</sup>	—0—
Georgia	4.00 <sup>j</sup>	1.00	Oklahoma	25.00	—0—
Hawaii	30.00	—0—	Oregon	24.00	12.50
Idaho*	35.00	16.00	Pennsylvania		
Illinois*			Philadelphia and counties	15.00 <sup>u</sup>	—0—
Cook County	14.00	5.00	of second class		
All other counties	25.00	10.00	Counties of third to	5.00	—0—
Indiana	19.00	—0—	eighth class	-40.00 <sup>u</sup>	
Iowa	7.00 <sup>k</sup>	—0—	Rhode Island	10.00	—0—
Kansas	35.00	—0—	South Carolina	12.15	—0—
Kentucky	70.00	—0—	South Dakota	20.00 <sup>v</sup>	—0—
Louisiana			Tennessee	1.00 <sup>w</sup>	1.00
Parish of Orleans	60.00	45.00	Texas	25.00	—0—
All other parishes	1.00 <sup>l</sup>	1.00	Utah	25.00	10.00
Maine	10.00 <sup>m</sup>	—0—	Vermont	25.00	—0—
Maryland	40.00	—0—	Virginia*	15.00	—0—
Massachusetts	5.00 <sup>n</sup>	—0—	Washington	45.00	—0—
Michigan	30.00 <sup>o</sup>	—0—	West Virginia	10.00	—0—
Minnesota	15.00	10.00	Wisconsin	6.00	—0—
			Wyoming	5.00 <sup>x</sup>	.50

\*These states have graduated civil filing fee schedules which are described in Table 2. The fees calculated and shown in this table are based on claims of \$2,000.

<sup>a</sup>Minimum filing fee is \$20. In lengthy cases where this uniform advance fee is inadequate to cover the schedule of fees set forth in the Arkansas Statutes, additional fees may be assessed. The schedule includes some of the following fees: \$2.50 for drawing, issuing, and sealing any sum-

mons or subpoena; \$.60 for every motion, rule, answer, interrogatory or other miscellaneous filing; \$3.00 for entering each judgment; \$2.00 for swearing jury; and \$1.00 for trial before court.

<sup>b</sup>Alameda, Los Angeles, Orange, Santa Clara, and San Diego.

<sup>c</sup>These figures represent the range in filing fees for these five counties. The clerk's fee, which includes a \$3 Judges' Retirement Fund fee, is uniformly \$33 when claims exceed \$1,000. The law

library fee and reporter fee vary by county.

<sup>d</sup>These figures represent the range in answer fees for these five counties. The clerk's fee, which includes a \$3 Judges' Retirement Fund fee, is uniformly \$18 regardless of the amount claimed. The law library fee and reporter fee vary by county.

<sup>e</sup>These figures represent the range in filing fees for all counties, excluding the five major ones. The clerk's fee, which includes a \$3 Judges'

Retirement Fund fee, is uniformly \$28 when the claim exceeds \$1,000. The law library and reporter fees vary by county.

<sup>7</sup>These figures represent the range in answer fees for all counties excluding the five major ones. The clerk's fee, which includes a \$3 Judges' Retirement Fund fee, is uniformly \$13 regardless of the amount claimed. The law library and reporter fees vary by county.

<sup>8</sup>A deposit of \$75 is required before any suit, action, or proceeding is instituted. This deposit is applied to step costs which range from \$.50 to \$25. Some of these costs include: \$1 for filing reply to counter claim; \$15 for issuing writ of summons; \$15 for drawing jury and all services in respect to trial; \$5 for entering judgment in docket, except when confessed under warrant of attorney; \$1 for filing and giving written notice of interrogatories and making entry of such actions; and \$1 for issuing a subpoena for each witness.

<sup>9</sup>The initial fee of \$.50 covers the filing of any paper. Step costs, which range from \$.50 to \$10, include the following: \$.50 for taking an affidavit; \$1 for issuing subpoena or citation to give evidence; \$1 for filing interrogatories, giving notice, and making entries; and \$3.50 for issuing commission to take depositions.

<sup>10</sup>Florida has a two-part general trial court filing fee consisting of mandatory and optional filing fees. There are two mandatory fees in a civil action: a \$20 statutory civil filing fee, which the clerk remits to the county general fund, and a \$2 statutory general service fee, which goes to the state general fund. Optional filing fees such as those charged in Dade County (\$1 docket fee for the publication of legal notices for indigents; \$4.75 for law library system; \$2.50 for legal aid program; and \$15.25 for county capital outlay account for court facilities) can boost the total civil filing fee to as much as \$45.50.

<sup>11</sup>A deposit of \$20 is required from which step costs are drawn. The step costs range from \$.25 to \$15, which includes some of the following: \$4 for copying and issuing process of summons; \$2 for entering verdict or judgment on minutes; \$.50 for issuing subpoena or summons; and \$1 for the filing of each pleading or instrument subsequent to the complaint.

<sup>12</sup>In counties having a population of 100,000 or more, an additional fee of \$1 is charged for a "journal publication" fee. Step costs range from \$.50 to \$5 and are charged for other services, such as \$2 for every attachment; \$5 for every cause tried by jury; \$2.50 for every cause tried by the court; \$1 for entering any rule or order; and \$2 for issuing writ or order, not including subpoenas.

<sup>13</sup>\$1 is charged for endorsing, registering, and filing the petition with the clerk of court. The following fees are some of the step costs (range \$.50 to \$10) charged for other services: \$1 for endorsing, registering, and filing supplemental or amended petitions; \$1 for issuing subpoena or summons with seal; \$1 for issuing notice of judgment with seal; and \$1 for swearing jury.

<sup>14</sup>The \$10 fee covers entry of an action or entering up and recording the judgment. Step costs (\$.50 to \$5) are charged for other services: \$.50 for every blank writ of attachment with a summons or an original summons; \$.50 for entry of a rule of court upon parties submitting a cause to referees; \$.50 for a subpoena or a subpoena *duces tecum*; and \$2 for a writ of protection or *habeas corpus*.

<sup>15</sup>Step costs are charged for the following: \$.10 for a blank writ of attachment and summons or an original summons; \$.10 for a subpoena; and \$.06 for *venire facias* for jurors.

<sup>16</sup>Step costs are charged for the following: \$10 for each trial, with or without a jury, in counties having a population of less than 100,000; \$15 for each trial without a jury and \$30 for each trial with a jury in counties having a population of 100,000 or more; and \$10 for the entry of any final judgment in all counties.

<sup>17</sup>Step costs, which range from \$.05 to \$3, include: \$2 for docketing each case; \$.10 for setting down cause for hearing; \$.25 for administering and certifying each oath; \$.10 for swearing each witness; \$1 for each subpoena; and \$.05 for filing each bill, answer, or other paper.

<sup>18</sup>Step costs, which range from \$.10 to \$10, include: \$1 for docketing a case; \$.25 for entering each appearance of a defendant; \$1 for entering each motion or rule on the docket; \$.10 for swearing each witness; \$.50 for receiving and entering verdict; \$1 for recording each judgment; \$1 for each subpoena; and \$.10 for filing each bill, answer, or other paper.

<sup>19</sup>Step costs, which range from \$.20 to \$10, include some of the following: \$1 for each additional party, plaintiff, or defendant; \$10 for petition to attach, *ex parte*; \$5 for petition to attach with notice; \$3 for executions; and \$.20 for an original writ.

<sup>20</sup>This \$20 initial fee is computed as follows: \$13.75 base rate; \$2.75 for compilation fund; and \$3.50 for Supreme Court building addition fund.

<sup>21</sup>This initial fee of \$7.50 includes docketing in the appearance docket, filing and noting the filing of necessary documents except subpoenas, entering cause on trial and motion dockets, and indexing pending suits and living judgments. Step costs which range from \$.35 to \$6 include: \$.75

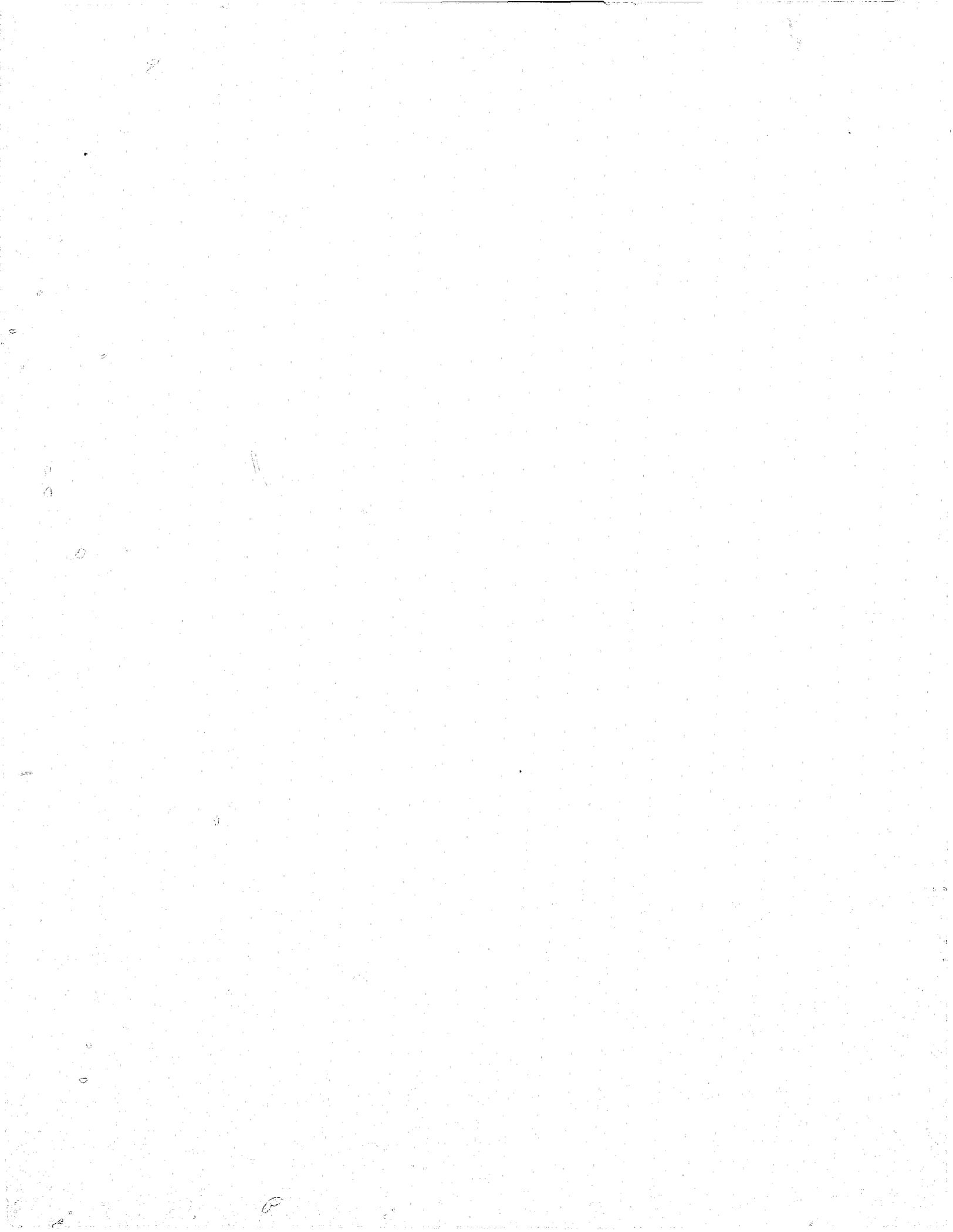
for issuing each writ, order, or notice, except subpoena; \$.75 for each name for issuing subpoena, swearing witnesses, entering attendance and certifying fees; and \$6 for calling a jury in each cause.

<sup>22</sup>According to the Administrative Office of Pennsylvania Courts, passage of a bill to change these fees is expected in the fall of 1977.

<sup>23</sup>Includes \$10 paid when case is filed and \$10 paid when case goes to trial by judge or by jury.

<sup>24</sup>The \$1 initial fee covers the filing of each bond, bill, complaint, motion, or other pleadings, documents, exhibits, or articles, affidavit, record or papers. Court clerks for both circuit and chancery courts may charge the following step costs which range from \$.50 to \$35: \$1.50 for issuing subpoena for each witness; \$4 for taking a deposition; \$1 for empaneling a jury; \$4 for examining a party in interrogatories; and \$2 for entering judgment.

<sup>25</sup>The initial fee of \$5 is charged for a case with five defendants or less and \$.25 for each additional defendant. Step costs which range from \$.25 to \$10 include: \$.75 for issuing a commission to take deposition; \$.50 for taking, certifying, and sealing an affidavit; and \$.50 for each certificate and seal.



**END**