

charge an additional seven dollars and fifty cents to the party requesting service.

The answer to your question is that you may charge the referring county. Section 30.231(2), F. S., states:

(2) All fees collected under paragraphs (a), (b), (c) and (d) of subsection (1) shall be nonrefundable, and no additional fees shall be required for alias and pluries documents when service was not effected on the original document.

Attorney General Opinion 071-299 held that the seven dollar and fifty cent prepaid fee was not considered income of the sheriff's office until services were rendered by the office. It is at that time the fees become earned income and are subsequently remitted to the county.

Section 30.51, F. S., provides, in part, for a collection of fees in a civil case from another governmental agency.

073-128—April 19, 1973

RULES OF COURT

CIRCUIT COURT RULE DOES NOT SUPERSEDE CONFLICTING PROVISIONS OF LAW

To: J. Clint Brown, Hillsborough County Attorney, Tampa

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Does a local circuit court rule relating to practice and procedure adopted prior to the revision of Article V of the State Constitution supersede conflicting provisions of law relating to probate and guardianship proceedings?

SUMMARY:

A local circuit court rule relating to practice and procedure adopted prior to the revision of Article V of the State Constitution does not supersede conflicting provisions of law relating to probate and guardianship proceedings formerly cognizable in the county judge's court.

Section 732.07, F. S. 1971, is a part of the Florida Probate Law. It designates specifically the records that are to be kept by the county judge in probate proceedings and states:

(8) No county judge shall permit any paper, instrument, document, pleading or file to be removed from his office or custody except under circumstances named in this law or for purposes of taking testimony.

The Florida Supreme Court's Transition Rule No. 3(1) provides that:

(1) In the Rules of Court promulgated by this Court and in the Florida Statutes, all references to the juvenile court, probate court, or other court which court's function has been vested in the circuit court by Florida Constitution, Rev. Article V, effective January 1, 1973, shall be deemed to refer to the circuit court effective January 1, 1973.

The circuit court rule here in question authorizes the removal of court files

from the circuit court clerk's office by attorneys of record and other persons under the conditions therein specified. It was adopted in 1941, presumably pursuant to the common-law rule (adopted in 1936) that is now, in substantially the same form, incorporated in the Florida Rules of Civil Procedure as paragraph (e) of Rule 1.020, authorizing the adoption of local court rules, subject to the approval of the Supreme Court.

Section 25.371, F. S., provides that when a rule is adopted by the Supreme Court concerning practice and procedure and such rule conflicts with a statute, the rule supersedes the statutory provision. (Under §2(a), revised Art. V, State Const., the rules of practice and procedure adopted by the Supreme Court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.) But the Florida Rules of Civil Procedure have always excluded probate proceedings from their purview. *See* the Author's Comment to the 1967 revision of the rules (30 F.S.A. p. 13) and Rule 1.010, as amended in 1968, excepting from the scope of the rules suits "to which the probate and guardianship rules or the summary claims procedure rules apply." When the local circuit court rule in question was adopted in 1941, there was obviously no intention to supersede the rules of practice and procedure applicable to probate and guardianship or other proceedings cognizable in the county judge's court.

I can find nothing in the statutes implementing revised Art. V, State Const., or in the Transitional Rules of the Supreme Court to indicate that local circuit court rules in effect on January 1, 1973, are now to be applied to such proceedings when in conflict with statutes that are still on the statute books (or, of course, Supreme Court rules applicable especially to such proceedings). As noted above, the Florida Rules of Civil Procedure expressly exclude probate and guardianship proceedings from their purview; and, in my opinion, a local circuit court rule should not be held to apply to such proceedings in the absence of a clear and unambiguous expression of such an intent. Thus, even assuming *arguendo* that a local court rule approved by the Supreme Court, as distinguished from a Supreme Court rule itself, could supersede a duly enacted statute, it seems clear that the local court rule here in question should not be given that effect.

Accordingly, pending legislative or judicial clarification, your question is answered in the negative.

073-129—April 19, 1973

STANDARDS OF CONDUCT

COUNTY HOUSING AUTHORITY DIRECTOR EMPLOYED PART-TIME CONSULTANT TO MUNICIPALITIES

To: County housing authority director

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTIONS:

1. Does the Standards of Conduct Law apply to a director of a county housing authority who is also employed, after his normal working hours as director have terminated, as a part-time consultant for cities located in Florida?

2. If the answer to the above question is in the affirmative, is the director required to file a sworn statement with the clerk of the circuit court of the county in which he is principally employed under the provisions of §112.313(2), F. S., (the Standards of Conduct Law)?