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SERVICE OF PROCESS FEES

House Bill 5253 with committee amendment
First Analysis (1-27-94)

Sponsor: Rep. Michael J. Griffin
Committee: Judiciary

THE APPARENT PROBLEM:

Generally, process in civil actions may be served by any legally competent adult, but if a matter involves a writ (other than a garnishment writ) requiring the seizure of property or the arrest of a person, process may be served only by a sheriff, deputy, or court officer. The Revised Judicature Act sets the fees that process servers may charge; those fees have remained unchanged since 1982. Process servers point out that the cost of living has increased about 35 percent since then, and seek inflationary adjustments to their fees.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to revise the schedule of fees for process served out of the circuit court, probate court, district court, or municipal court, as follows:

Fee	Current	Proposed
Personal service--summons and complaint in civil action (per defendant)	\$10 + mileage	\$13 + mileage
Personal service--affidavit of account and statement (per defendant)	\$10 + mileage	\$13 + mileage
Garnishment summons and affidavit (for each garnishee and defendant)	\$7 + mileage	\$10 + mileage
Seizure and delivery of goods in a case of claim and delivery	\$20 + mileage + expenses	\$27 + mileage + expenses
Receiving and filing a defendant's bond in a case of claim and delivery	\$2	no change
Order to show cause	\$10 + mileage	\$13 + mileage
Subpoena on discovery	\$10 + mileage	\$13 + mileage
Writ, affidavit, bond in case of attachment	\$10 + mileage	\$13 + mileage
Property seizure in attachment case	\$20 + mileage + expenses	\$27 + mileage + expenses
Levy under writ of execution	\$20 + mileage + expenses	\$27 + mileage + expenses

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Fee	Current	Proposed
Levy under writ of execution--additional fee as a result of satisfaction of judgment prior to sale	7% of 1st \$1,000 + 3% of remainder	7% of 1st \$5,000 + 3% of remainder
Sale on levy in case of execution	7% of 1st \$1,000 + 3% of remainder	7% of 1st \$5,000 + 3% of remainder
Notice of sale on levy in execution or mechanics lien	\$10 + mileage	\$13 + mileage
Writ for restitution of premises (eviction)	\$20 + mileage + expenses	\$27 + mileage + expenses
Subpoena directed to a witness (including judgment debtor)	\$10 + mileage	\$13 + mileage
Civil bench warrant or body execution	\$20 + mileage + \$10/hr.	\$27 + mileage + \$13/hr.

(Note: the bill would not affect certain sheriffs' fees that are set by a different section of the act and which do not involve service of process.)

The bill would take effect October 1, 1994. Except for the fee for filing a bond, each of the above fees would increase by \$1 annually three times: on October 1, 1995; on October 1, 1996; and on October 1, 1997.

MCL 600.2559

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill has no fiscal implications. (1-26-94)

ARGUMENTS:

For:

The bill would enact a long-overdue increase of process servers' fees. Those fees, which are paid by attorneys and their clients, have not increased since 1982. Inflation has taken its toll since then; the cost of living has increased a reported 35 percent. The bill would simply make the adjustments necessary to counteract the results on inflation on the fees, plus prevent the need to revisit the statute in the near future by building in modest additional increases over the next few years. Under the bill, process servers, whose job is often tedious and sometimes dangerous, would again be able to receive fair compensation for their efforts.

Against:

Even though the fees are paid by the attorneys and litigants in a civil case, the fact that the fees are set by statute may lead to a perception that the state is once again increasing burdens for taxpayers. More to the point, by increasing the cost of service of process, the bill would increase the cost of justice for litigants.

Response:

Increases are modest, amounting to only a few dollars in most cases; it is difficult to see how any given increase would act to deny a wronged party access to the courts. Moreover, indigent civil litigants and parties in domestic disputes can receive assistance from legal aid.

Against:

Although some process serving jobs are undoubtedly time-consuming, someone serving writs of garnishment gets paid per writ, even though it often happens that a number of writs are served upon one employer. The need for increases in such situations may be debatable.

Response:

Until recently, garnishment writs were tied to the pay period of the person whose wages were being garnished; thus, for someone paid weekly, a new writ would be served each week. However, the law on garnishments was recently changed to provide for continuous wage garnishments of up to 90 days, thus significantly decreasing garnishment fee income for process servers.

POSITIONS:

Court Officers, Deputy Sheriffs, Process Servers of Michigan, Inc., supports the bill. (1-26-94)