

1975 O. A. G.

OFFICIAL OPINION NO. 16

September 5, 1975

Honorable Adam Benjamin, Jr.  
Indiana State Senator  
3637 Grant Street—Suite 7  
Gary, Indiana 46408

Dear Senator Benjamin:

This is in response to your request for my official opinion concerning the following question:

“Whether an additional docket fee should be charged for proceedings supplemental in city courts in counties having two or more cities of the second-class under a Trial Rule 69(E) motion filed in the same courts in which a judgment has been rendered.”

ANALYSIS

The Indiana Code of 1971, Section 33-10-9-1 provides in part, as follows:

“Upon the institution of any civil action or proceeding, whether by original process, removal or otherwise, in any city court in all counties in the state of Indiana having two (2) or more cities of the second class, there shall be paid by the party or parties so instituting such action or proceeding the sum of five dollars (\$5.00), which shall constitute a docket fee payable to the city in which court is located and which said docket fee shall be in lieu of any docket fee now required by law to be taxed by clerks of city courts . . .”

Thus, if a proceeding supplemental to execution is considered the institution of a new civil action, separate from the action in which the judgment was rendered, a docket fee of five dollars (\$5.00) must be taxed to the moving party. If, however, the proceeding supplemental is determined to be merely a continuation of the action in which the judgment

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was rendered, then a docket fee should not be taxed a second time.

Historically, Indiana case law had previously held that a proceeding supplemental to execution was an independent action relating to, but not part of, the original action in which judgment was rendered. *Pounds, et al. v. Chatham* (1884), 96 Ind. 342; *Harper, et al. v. Behagg* (1895), 14 Ind. App. 427, 42 N.E. 1115. As a result, until the Indiana Rules of Procedure took effect on January 1, 1970, the party instituting proceedings supplemental was required to pay the docket fee required under Code Section 33-10-9-1.

The initiation of proceedings supplemental is now governed by Indiana Rules of Procedure, Trial Rule 69(E). The question of whether proceedings under Trial Rule 69(E) constitute new and independent civil actions has recently been answered by the Court of Appeals of Indiana in *Myers v. Hoover* (1973), — Ind. App. —, 300 N.E. 2d 110. There the Court stated at p. 113:

“Given the terms of Trial Rule 69(E) and the procedure thereunder, we are compelled to the conclusion that in adopting the new rule, our Supreme Court intended that proceedings supplemental to execution no longer be considered new and independent civil actions. Rather, they appear to be a mere continuation of the original cause.”

## CONCLUSION

It is, therefore, my Official Opinion that a motion under Trial Rule 69(E), when filed in the same court where judgment was rendered in the original action, constitutes a continuation of the original action and not a new, independent action. Therefore, the docket fee otherwise required under the Indiana Code of 1971, Section 33-10-9-1, should *not* be taxed to the moving party in such proceedings supplemental.