



Document Retrieval Results

[Help](#)

William O'Brien
 1982 Iowa Op. Atty. Gen. 432
 Opinion No. 82-6-2
 June 17, 1982

Term 

1982 Iowa Op. Atty. Gen. 432, 1982 WL 42734 (Iowa A.G.)

Office of the Attorney General
 State of Iowa

Opinion No. 82-6-2

*1 June 17, 1982

CLERK OF COURT: FILING FEES: The twenty-five dollar filing fee imposed pursuant to section 331.701(1)(a), The Code Supp. 1981, is not applicable to cross-petitions, petitions of intervention, counterclaims or other like pleadings filed pursuant to the initiatory petition. (Messina to O'Brien, Court Administrator, 6/17/82)

William O'Brien
 Court Administrator
 Supreme Court
 State Capitol
 Des Moines, Iowa 50319

Dear Mr. O'Brien:

You have requested an Attorney General's Opinion regarding the collection of filing fees under section 331.705, The Code Supp. 1981. In relevant part, that statute provides that:

(1) The clerk shall collect the following fees:

(a) For filing a petition, appeal, or writ of error and docketing them, twenty-five dollars. (emphasis supplied).

Section 331.705(1)(a), The Code Supp. 1981. Your specific question is:

Does the twenty-five dollar filing and docketing fee apply to third party petitions, cross-petitions, petitions of intervention, and counterclaims or may the fee only be assessed against the party initiating the original action?

The particular pleadings you ask about are obviously not included in the statutory reference to an appeal or writ of error; we thus focus on whether the authorization for imposition of fees for the filing of a 'petition' is meant to encompass any of the pleadings to which you refer. We conclude that by using the term 'petition' in section 331.705(1)(a), the legislature has authorized the imposition of fees only for the single pleading which originates the legal action.

The word 'petition' is not a catch-all term for the variety of pleadings which may be filed in a given case. In our scheme of litigation, a 'petition' is a term of art. It denotes the singular pleading which initiates the legal action. See Iowa R.Civ.P. 48; see also Iowa R.Civ.P. 70. The petition is but one of a number of allowable pleadings. See Iowa R.Civ.P. 68. The cross-petition, counterclaim, and petition to intervene that you ask about are all pleadings independent of the pleading which is specifically denominated the 'petition.' See Iowa R.Civ.P. 69(a). We find no basis for concluding that the reference to a 'petition' in section 331.705(1)(a) is anything but a reference to that single, particular pleading which commences the original legal action. See 2A C. Sands, Statutes and Statutory Construction § 47.30, at 152 (4th ed. 1973) ('In the absence of a manifested legislative intent to the contrary, or other overriding evidence of a different meaning, legal terms in a statute are presumed to have been used in their legal sense'); See also Dotson v. Ames, 251 Iowa 467, 471, 101 N.W.2d 711, 714 (1960) (the express mention of the thing in a statute implies the exclusion of others).

It is our opinion that the legislature intended the term 'petition' in section 331.705(1)(a) to refer only to the initial pleading which originates the legal action. The filing fee is not applicable to third party petitions, cross-petitions, petitions of intervention, counterclaims or other like pleadings filed subsequent to the initiatory petition.

Sincerely,

*2 John P. Messina
 Assistant Attorney General

1982 Iowa Op. Atty. Gen. 432, 1982 WL 42734 (Iowa A.G.)

END OF DOCUMENT