



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 19, 2023

The Honorable Cecelia Bounds
Circuit Clerk, Greene County
Post Office Box 310
Leakesville, Mississippi 39451

Re: Fees to be Collected Upon Filing Petition for Expungement

Dear Ms. Bounds:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Is the \$150.00 filing fee in Mississippi Code Annotated Section 99-19-72 the sole fee to be collected upon filing a petition for expungement pursuant to Section 99-19-71 if filed as a new civil filing?

Brief Response

If a petition for expungement pursuant to Section 99-19-71 is filed as part of the original criminal filing, then only the \$150.00 fee enumerated in Section 99-19-72 shall be collected. However, if the petition for expungement is filed as a new civil filing, all other applicable, statutorily required fees that a circuit clerk must charge when a civil case is filed shall be collected in addition to the \$150.00 fee required by Section 99-19-72.

Applicable Law and Discussion

Your request details a new directive from the Administrative Office of Courts regarding the filing of expungement petitions as civil actions. However, this office is limited to opining on prospective questions of state law only and cannot opine on rules and regulations of other state agencies. Miss. Code Ann. § 7-5-25. To the extent your request asks about a rule or regulation handed down from another state agency, we must decline to respond by official written opinion. We offer the following statutory interpretation for prospective purposes only.

Section 99-19-72(1) provides, in relevant part, “[a] filing fee of One Hundred Fifty Dollars (\$150.00) is hereby levied on each petition to expunge an offense under Section 99-19-71 to be collected by the circuit clerk. . . .” One hundred dollars (\$100.00) is to be deposited into the Judicial System Operation Fund, forty dollars (\$40.00) is to be deposited into the District Attorneys Operation Fund, and ten dollars (\$10.00) is to be retained by the circuit clerk collecting the fee for administration purposes. *Id.*

Section 25-7-13 provides a list of fees that shall be charged by the clerks of the circuit court, which includes certain fees to be charged for every civil case filed. First, the clerks of the circuit court shall charge eighty-five dollars (\$85.00) for “docketing, filing, marking, and registering each complaint, petition and indictment.” Miss. Code Ann. § 25-7-13(1)(a). Second, Section 25-7-13(1)(c) requires a ten-dollar (\$10.00) fee be charged “[f]or every civil case filed,” which must “be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14.” Third, “[f]or every civil case filed, an additional fee to be deposited to the credit of the Judicial System Operation Fund established in Section 9-21-45” in the amount of forty dollars (\$40.00) shall be charged by the circuit clerk pursuant to Section 25-7-13(1)(d).

Additionally, Section 37-26-3 provides, in relevant part:

In addition to any other fees or costs now or as may hereafter be provided by law, there is hereby charged in all civil cases in the chancery, circuit, county, justice and municipal courts of this state a court education and training cost in the amount of Two Dollars (\$2.00). . . . Such cost shall be collected by the clerk or judicial officer from the party bringing the civil action at the time of filing and taxed as costs.

Miss. Code Ann. § 37-26-3(1).

The statutes do not impose a requirement that petitions for expungement be filed as a new civil matter. This office was previously asked whether the fees for civil filings in Section 25-7-13 would apply to petitions for expungement pursuant to Section 99-15-26, which provides for the expungement of the record in a case where an arrest was made, the person arrested was released, and the case was dismissed or the charges were dropped or there was no disposition of the case. MS AG Op., *French* at *1 (July 1, 2011). In response, we opined that “[i]f the matter returns to court as a new matter under a new petition, the \$85.00 filing fee pursuant to Section 25-7-13(1)(a) shall be charged. If the new document is being filed as part of the original case, the \$85.00 would not be applicable.” *French* at *1. We are still of the same opinion that if a petition for expungement under Section 99-19-71 is filed as part of the original criminal case, then only the \$150.00 fee under Section 99-19-72(1) is required. If such petition is filed as a new civil case, then the applicable filing fees for a civil action shall apply in addition to the \$150.00 fee required under Section 99-19-72(1).

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Abigail C. Overby*

Abigail C. Overby
Special Assistant Attorney General

OFFICIAL OPINION