

SERVICE OF PROCESS FEES

House Bill 4899 with committee amendment First Analysis (10-23-03)

Sponsor: Rep. Larry Julian
Committee: Criminal Justice

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 were last raised by Public Act 133 of 1994, which provided for a modest increase in that year followed by a \$1 increase in each of the three subsequent years. The fees have therefore been unchanged since 1997. Process servers point out that the cost of living has increased significantly 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 state courts and to set a mileage limit for reimbursement of traveling fees. Currently, a sheriff

or officer serving process is entitled to traveling fees. Mileage is computed from the county seat of the county in which service was made to the place of service. Instead, the bill would specify that a person authorized by the act or supreme court rule to serve process or a paper issued by or filed with a court within Michigan would be entitled to traveling fees from the place where the court that issued or filed the process or paper was located to the place of service. However, the bill would also limit the reimbursement to no more than 75 miles each way. The bill would also make a number of nonsubstantive, technical changes to update and clarify language in the act.

Primarily, the bill would revise the schedule of fees, which currently are for service out of "circuit court, the probate court, the district court, or any municipal court", and would make them apply to process or papers served out of *a court in the state*. The current fee schedule is described in the table below:

| Type of Service | Current Fee |
|---|--|
| Personal service - summons and complaint in civil action (per defendant) | \$16 + mileage |
| Personal service - affidavit of account and statement (per defendant) | \$16 + mileage |
| Garnishment summons and affidavit (for each garnishee and defendant) | \$13 + mileage |
| Seizure and delivery of goods in a case of claim and delivery | \$30 + mileage + reasonable expenses |
| Receiving and filing a defendant's bond in a case of claim and delivery | \$2 |
| Order to show cause | \$16 + mileage |
| Subpoena on discovery | \$16 + mileage |
| Writ, affidavit, bond in a case of attachment | \$16 + mileage |
| Property seizure in attachment case | \$30 + mileage + reasonable expenses |
| Levy under writ of execution | \$30 + mileage + reasonable expenses |
| Levy under writ of execution - additional fee as a result of satisfaction of judgment prior to sale | 7% of the first \$5,000 in receipts + 3% of receipts exceeding the first \$5,000 |
| Sale on levy in case of execution or mechanics lien | \$16 + mileage |
| Writ for restitution or premises (eviction) | \$30 + mileage + reasonable expenses |
| Subpoena directed to a witness (including judgment debtor) | \$16 + mileage |
| Civil bench warrant or body execution | \$30 + mileage + \$13/hour for executing the warrant |

The bill's proposed fee schedule would apply to process or papers served out of *a court in the state* as follows:

| Type of Service | Proposed Fee |
|---|---|
| Personal service - summons and complaint in a civil action (per defendant) | \$18 + mileage |
| Personal service - affidavit and account (per defendant) | \$18 + mileage |
| Request for and writ of garnishment (per garnishee and defendant) | \$15 + mileage |
| Personal service - order to seize goods subject to claim and delivery action. | \$32 + mileage + reasonable expenses |
| Receiving and filing a bond from and on behalf of a defendant in a claim and delivery action. | \$12 |
| Order to show cause (per person served) | \$18 + mileage |
| Subpoena on discovery (per person served) | \$18 + mileage |
| Levying under or serving an order for the seizure of property | \$32 + mileage + reasonable expenses |
| Order for seizure of property if issued in an action in which a judgment against the owner of the property, and if satisfied prior to the sale or settlement between parties. | 7% of the first \$5,000 in payments or settlement amounts + 3% of payments or settlements exceeding the first \$5,000 |
| Sale of property seized under an order for the seizure of property | 7% of the first \$5,000 in receipts + 3% of receipts exceeding the first \$5,000 |
| Each notice of sale under an order for the seizure of property or construction lien posted in a public place in the city or township | \$18 + mileage |
| Order of eviction or writ for the restitution of premises (per defendant) | \$32 + mileage + reasonable expenses |
| Subpoena directed to a witness, including a judgment debtor. | \$18 + mileage |
| Civil bench warrant or body execution. | \$32 + mileage + a reasonable hourly fee for time involved in executing the warrant |
| Service by mail | \$5 + actual cost of postage |

Mileage reimbursement. The RJA provides that mileage reimbursement is equal to the rate set by the civil service commission for employees in the classified civil service system. Currently the rate is 36 cents. The bill would provide that the allowable mileage would be 1.5 times the rate allowed by the civil service commission (54 cents for 2003). In addition, under current provisions, the mileage is computed differently, depending on the court and the location of the service. Under the bill, the mileage would be calculated by the shortest distance from the place where the court that issued or filed the process was located to the place of service.

Further, the RJA provides that a person who serves process is entitled to receive a \$10 fee (in addition to the appropriate fee above) for each process that has an incorrect address. The bill would add that the person would also be entitled to receive a reimbursement for mileage.

Cost-of-living increase. The bill would add a "cost-of-living" provision. Beginning on January 1, 2005, each specific dollar amount in the chart above would have to be adjusted annually by multiplying the amount by a cost-of-living adjustment factor that is a fraction. The numerator would be the U.S. Consumer Price Index for the prior calendar year and the denominator would be the U.S. Consumer Price Index for 2003. The resulting product would have to be rounded to the nearest 50 cents. The adjusted amount could not exceed \$1.

"United States Consumer Price Index" would mean the annual average of the U.S. CPI for all urban consumers as defined and reported by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor agency, and as certified by the state treasurer.

Miscellaneous. Under the bill, an "order of seizure of property" would include a writ of attachment and a

writ of execution, including, though not limited to, execution in a claim and delivery action on property other than the property that is the subject of the claim and delivery action.

The bill would take effect January 1, 2004.

MCL 600.2555 and 600.2559

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would enact a long-overdue increase of process servers' fees and reimbursement rates for mileage. Those fees, which are paid by attorneys and their clients, have not been increased since 1997. Inflation has taken its toll, especially when the price of gas is considered. The bill would simply make the adjustments necessary to counteract the results on inflation on the fees. The cost-of-living provision would prevent the need to revisit the statute in future years by building in modest additional increases each year. 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 their clients 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 about \$2 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.

POSITIONS:

The Michigan Council of Private Investigators supports the bill. (10-20-03)

A representative from the Court Officers – Deputy Sheriffs Association testified in support of the bill. (10-22-03)

A representative of the Michigan Sheriffs Association indicated support for the bill. (10-22-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.