



# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

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John Voelker  
Director of State Courts

July 27, 2012

Hon. J.B. Van Hollen  
Attorney General  
114 East, State Capitol  
Madison, WI 53707-7857

RE: Fees for copies of court records made by personal copy devices

Dear Attorney General Van Hollen:

I am requesting the opinion of your office with respect to the proper fee to be charged by the clerk of circuit court and the register in probate for copies of documents contained in court case files when those copies are made by a requester using a personal copying device such as a camera phone, hand-held scanner, or portable computer drive. This question arose when a newspaper reporter made copies of 20 pages from a circuit court case file using a camera phone, and the Walworth County clerk of circuit court requested payment for those copies. On February 6, 2012, your office issued a letter to the reporter concluding that the clerk of circuit court was entitled to charge the \$1.25 per page fee set by Wis. Stats. §814.61(10).<sup>1</sup>

On February 13 the Wisconsin Freedom of Information Council (FOIC) requested that you revisit this letter, contending that §814.61(10) applies only to copies made by the clerk and not to copies made by a requester with his or her own equipment. FOIC sought to avoid application of §814.61(10) by reasoning that the reproduction now in the hands of the requester is a "photo" and not a "copy". Most of its analysis was then directed to whether a custodian can charge in this situation under §19.35(3)(a).

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<sup>1</sup> Copy fees for court documents provided by the clerk of circuit court and the register in probate are set in Chapter 814 of the Wisconsin Statutes.

- §814.61(10)(a) provides "for copies, certified or otherwise, of any document for which a specific fee is not established by this section, or for comparison and attestation of copies not provided by the clerk, \$1.25 per page."
- §814.66(1)(h)1. provides a fee of \$1.00/page for the register in probate.
- §814.61(10)(b) and §814.66(1)(h)2. provide reduced fees to the state public defender equal to the actual, necessary and direct costs of copying.
- Introductory language to both statutes provides that the clerk and register in probate "shall collect" these fees.
- Both statutes note that court records may be kept by microfilm, optical disk or electronically.

§814.61(10) deserves its own interpretation, for the reasons set out in OAG 01-03. In that opinion, your office concluded that the register of deeds copy fee provisions found in §59.42 “are intended as an express exception to the general fee provisions of the public records statute.” Your office extended this reasoning to circuit court records in a letter to my office dated October 25, 2005.

One possible reason that the legislature has historically treated these three offices as exceptional may lie in the nature of the office. For most public agencies, record-keeping is an ancillary duty to the primary work of the office, but for these offices keeping records is the core of their work. See, for example, the extensive list of record-keeping duties laid out in §59.40(2) and §851.72. Courts have long been partially funded through user fees, and the legislature has chosen to fund the record-keeping work of the clerk and register through a per-page fee on persons requesting the records.

Even in the electronic era, the per-page fee continues to be relevant to court records. Court records are paginated within each document, although not from beginning to end of the case. Every case gets a number; every document within that case is file-stamped, filed in the order received, and keyed to an event code in the CCAP case management system. Even when documents are received electronically, they are still filed as documents, with pages, and referred to accordingly in court. §59.49(2) and §851.72(2) both take note that court records may be maintained by microfilm, optical disk or electronic files, but the evolving formats have not caused the legislature to amend the fees. When new technologies are introduced, clarification of the applicable fees is ultimately a question for the legislature, as your office has remarked.

Wisconsin courts were reorganized in 1979 and the current statutes governing fees of the clerks and registers were created by 1981 Act 317. The public records statute in its current form was created one week later by 1981 Act 335. It is fair to infer that the legislature made a conscious choice to continue the long-standing practice of charging higher copy fees for court records. §814.61(10) and §814.66(1)(h) also incorporate an “actual, necessary and direct” exception for copies requested by the state public defender. In contrast to the public records statute, which allows authorities to provide copies at a reduced charge in the public interest, the court statutes state that the clerk and register in probate “shall collect” the copy fees. As your office concluded with respect to the registers of deeds, these fee provisions “are mandatory and have long been recognized as express exceptions to the significantly more limited copying charges required by Wis. Stat. Sec. 19.35(3).”

Finally, it is important to note that the amount of money received for copy fees each year by the clerks of circuit court and the registers in probate is substantial and reflective of the legislative judgment to fund the offices in part through user fees. A survey found that the clerks collected more than \$815,000 in 2011 and the registers collected more than \$97,000. While not all of this money would be affected by allowing requesters with personal devices to make free copies, it seems predictable that many requesters will soon have access to various forms of copy technology. For that reason, a change in interpretation would work a substantial change to the funding mechanism chosen by the legislature. Such an interpretation presumably would also impact other custodians who now charge the “actual, necessary and direct” fee of §19.35(3)(a).

I would appreciate your consideration of this question. I hope you will also consider the letters you received in February from the Wisconsin Clerks of Circuit Court Association and the Wisconsin Registers in Probate Association.

Sincerely,

A handwritten signature in black ink, appearing to read "A. John Voelker". The signature is fluid and cursive, with a large initial "A" and "V".

A. John Voelker  
Director of State Courts

cc: Lonnie Wolf, President of Wisconsin Clerks of Circuit Court Association  
Amy Franzen, President of Wisconsin Registers in Probate Association