



OFFICE OF THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY

January 20, 2011

Honorable Toni Preckwinkle
President, Cook County Board of Commissioners
118 N. Clark Street, Room 537
Chicago, Illinois 60602

Dear President Preckwinkle:

In an effort to assist the County in reaching our collective budgeting goals, I had my General Counsel conduct legal research to determine the last time each Cook County agency, including the Office of the Clerk of the Circuit Court of Cook County ("Clerk's Office"), had its statutory fees increased by the State Legislature. We found that several of the agencies have not had fees increased in almost 20 years; and there is no fee for the Public Defender, even though many defendants are able to post bail, or even pay for other court-appointed counsel.

Therefore, I would respectfully recommend that the County's Intergovernmental Affairs Office and lobbyist draft amendments to all of the fee statutes for each office indicated, as appropriate, obtain sponsors, and move the legislation forward. Following is a synopsis of the results of our research (please see attached copies of the fee statutes for each agency):

- State's Attorney.
 - 15 State's Attorney fees have not been increased since the statute for counties in excess of 3 million population was passed in 1991. 55 ILCS 5/4-2002.1 (pp. 1-3, attached).
 - On July 22, 2010, the fee for municipal prosecutors was increased, but State's Attorney fees were not increased.
 - On January 1, 2010, a sentence was added that State's Attorneys are entitled to \$10 of the additional fine to fund juvenile records.
- Recorder of Deeds.
 - 8 fees have not been increased since before 1989, including the \$20 fee for recording of deeds and other instruments. 55 ILCS 5/4-12002 (pp. 4-6, attached).
 - On July 1, 2005, a Rental Housing Support Program State surcharge was added, \$1 of which is retained by the County.

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GENERAL COUNSEL

- On June 1, 2004, a fee for non-certified copies of records was added, which is retained by the County.
- County Clerk.
 - The fees for the County Clerk were last increased effective January 1, 1992. 55 ILCS 5/4-12003 (pp. 7-9, attached).
 - On January 29, 2008, the marriage fee was increased by \$5, which is disbursed to a State fund.
- Clerk of the Circuit Court of Cook County.
 - The fees for the Clerk of the Circuit Court of Cook County were last increased on June 1, 2002 at my request, and proposed by then-President John Stroger. 705 ILCS 105/27.2a (pp. 10-17, attached).
- Sheriff.
 - The fees for the Sheriff were increased on January 1, 1992 and again on June 1, 2007. 55 ILCS 5/4-12001 (pp. 18-20, attached).
 - In February 2008, a Cook County Ordinance suggested by the Office of the Clerk of the Circuit Court of Cook County allowed the \$25 court security services fee to be collected in Cook County on civil cases. Cook County Code of Ordinances, Section 18-32, Ord. No. 08-O-19, 2-20-2008 (p. 21, attached). Although the court security services fee in criminal and traffic cases is also permitted by statute to be set at \$25, the County Board has set these fees at amounts lower than the permitted \$25 (\$15 and \$5). Therefore, there is room for these fees to be increased without any change to State law. Cook County Code of Ordinances, Sections 18-32 and 32-1, Chapter 18 (pp. 21-22, attached).
 - The \$25 court security services fee has not been increased by the State Legislature since December 1, 2003. 55 ILCS 5/5-1103 (p. 23, attached).
- Public Defender.
 - Constitutionally, people must be represented by a Public Defender or other court-appointed counsel if they cannot afford an attorney. However, we feel that although everyone should be provided court-appointed counsel, at a minimum, the Public Defender could receive the bond money as opposed to it being returned to the defendant, and whatever the court would otherwise assess for a court-appointed counsel. Therefore, we propose changes to the Public Defender statutes that would significantly increase County General Fund revenue by requiring existing fees for court-appointed counsel to be applied to Public Defenders. At present, the Public Defender statutes prohibit Public Defenders from receiving any fee whatsoever from the defendant for their services. We are proposing that the statute be amended as suggested in the attached document, which would allow existing fees for court-appointed counsel to also be applied to Public Defenders. 55 ILCS 5/3-4006 and 5/3-4007; 725 ILCS 5/113-3; 725 ILCS 5/113-3.1 (pp. 24-27, attached). See e.g., *People v. Kelleher*, 116 Ill. App. 3d 186, 452 N.E.2d 143 (4th Dist. 1983) (state

recoupment statutes for court-appointed counsel are constitutional when defendant is given a hearing, when geared toward defendant's ability to pay, tailored to impose an obligation only upon those with a foreseeable ability to meet it, and to enforce that obligation only against those who actually become able to meet it without hardship).

As you can see from this synopsis, fees for many of the County agencies have not been increased in line with inflation. I would respectfully recommend that legislation be proposed by the President's Office to increase the fees for the State's Attorney, Recorder of Deeds, County Clerk, Clerk of the Circuit Court, Sheriff, and Public Defender, and that the court security services fee in criminal and traffic matters be increased by County Board Ordinance.

In addition, we have already drafted amendments to other statutes that include fees that are not a part of the fee statute for the Clerk's Office, as well as a proposal to amend a subsection of the Clerks of Courts Act. We would like the support of the President's Office to assist us in obtaining sponsors and moving these amendments forward in Springfield. Following is the list of legislative amendments that we are proposing:

- We are proposing a change to the **Counties Code** that would allow:
 - A \$5 "additional fee to finance the court system" fee to be collected at the time of filing of all civil cases, to be disbursed to the County General Fund. 55 ILCS 5/5-1101(b) (pp. 28-30, attached). At present, this \$5 fee may only be collected by counties with populations of 1 million or less.
 - A \$30 fee to be collected upon a judgment of guilty or grant of supervision for reckless driving or aggravated reckless driving, 55 ILCS 5/5-1101(a) (pp. 28-30, attached), to be disbursed to the County General Fund. At present, this \$30 fee may only be collected for a DUI conviction or supervision. Since many first-time DUIs are plead down to reckless driving, and because the expungement statute was recently amended to include reckless driving and aggravated reckless driving in a category similar to DUIs, we feel that this is a socially responsible addition to this statute.
- We are proposing multiple changes to the **civil indigent person** statute that would significantly increase revenue to the County General Fund by ensuring that persons who can afford to pay court filing fees pay such fees, by requiring more thorough validation of economic status, and penalties for petitioners and lawyers who attempt to utilize the system for their financial advantage. (pp. 31-36, attached.)
 - At present, indigent petitioners must only complete an affidavit that they have no money to pay the court fees, and do not have to submit any evidence or suffer any consequences if they have misinformed the court.
 - In addition, attorneys who step in to represent indigent petitioners after the petition has been granted, and then require the person who was adjudged to be indigent to

pay attorney fees to them, suffer no consequences under the current law, and all statutory fees are then waived.

- We are proposing changes to the **Deposit of Bail Security (D-Bond)** statute that would significantly increase revenue to the County by:
 - Increasing the percentage of bail that is retained by the Clerk's Office from D-Bonds, and disbursed to the County General Fund, from 10% to 30%. D-Bonds, or deposit bonds, are when the defendant is permitted by the court to deposit only 10% of the bail amount with the Clerk's Office. 725 ILCS 5/110-7 (pp. 37-39, attached).
- We are proposing changes to the **Cash, stocks, bonds and real estate as security for bail (C-Bond)**, which at present does not permit the Clerk's Office to retain any of the administrative costs of handling the deposit, that would significantly increase revenue to the County by:
 - Adding that, if the bond was posted in cash, 10% of the cash deposit be retained by the Clerk's Office, and disbursed to the County General Fund, upon return of the cash bond to the defendant. 725 ILCS 5/110-8 (pp. 40-42, attached).
 - Adding that, if the bond was posted in stocks, bonds, or real estate, the defendant shall pay the Clerk of Court a document storage fee, pursuant to 705 ILCS 105/27.3c, which is presently set at \$15, prior to return of the bond to the defendant. (pp. 22 and 43-44, attached.)
- We are proposing a change to the **Clerks of Courts Act** that would significantly increase revenue to the County General Fund by allowing:
 - A processing fee of \$1 to \$5 to be charged by the Clerk's Office upon the filing of any document that does not already require a fee, and for which fees are not waived by statute. 705 ILCS 105/27.2a(p) (pp. 45-56, attached).
 - This fee is similar to the fee already allowed by the County Clerk statute ("For filing papers in his office, 50 cents for each paper filed . . ."), 55 ILCS 5/4-12003 (pp. 7-9, attached).
 - The majority of documents filed with the Clerk's Office are "no fee filings," and a processing fee would permit the Clerk's Office to recoup its administrative time in receiving, docketing, filing, and storing these papers.
- We are proposing changes to the **Neutral Site Custody Exchange Funding Act**, which aids not-for-profit agencies that are already providing neutral site child custody exchanges at no fee to the court, to generate revenue for the County by:
 - Providing that 2% of the \$1 to \$8 neutral site custody exchange fee be deposited into an existing County fund whose purpose is to offset the administrative expenses incurred by the Clerk's Office in disbursing the fee. 55 ILCS 82/15 (p. 57, attached).
 - At present, the County Board has not adopted an Ordinance requiring the collection of the neutral site custody exchange fee, but the collection of this fee would greatly aid the not-for-profit organizations who presently provide these services to the court for free.

- By adding an administrative service charge of 2%, this would reimburse the Clerk's Office for the time expended in collecting and disbursing this fee to these not-for-profit agencies.
- We are proposing changes to several additional sections of the **Counties Code (mental health court fee, peer jury fee, children's advocacy center fee), and to the Roadside Memorial Fund and DUI Analysis fee** that would increase revenue to the County by:
 - Adding that small portions of the existing fees be deposited into an existing County fund whose purpose is to offset the administrative expenses incurred by the Clerk's Office in disbursing the fee. 55 ILCS 5/5-1101(d-5), (e) and (f-5); 730 ILCS 55/5-4-3(j) (pp. 58-67, attached).
 - At present, the Clerk's Office collects and disburses these fees with no reimbursement for administrative costs from these fees. However, other fee statutes allow for this reimbursement of administrative costs.
- We are proposing changes to the **Appearance fees in supplemental proceedings** statutes and Circuit Court Rule that would increase County General Fund revenue by:
 - Eliminating statutory provisions that allow Appearances in supplemental proceedings to be filed with no fee. 735 ILCS 5/12-716(b), 735 ILCS 5/12-814(b), Ill. R. Cir. Ct. Cook. Co., R 1.3(b) (pp. 68-69, attached).
 - At present, the initial Appearance must be filed with an Appearance fee, unless waived by the court, but subsequent Appearances, and Appearances on supplemental proceedings, are filed with no fee. The Clerk's Office must take the same actions regardless of the type of Appearance, which includes docketing the Appearance, ensuring that court notices are sent to the correct parties, and filing and storing the Appearance.

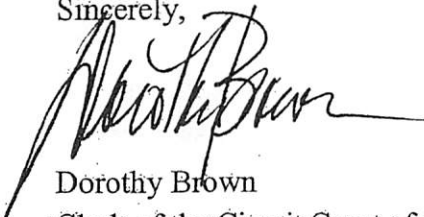
In addition, the Administrative Offices of the Illinois Courts' Manual on Recordkeeping, State statutes, and case law provide that **fees should be assessed by the judiciary for each count** on which there is a conviction or plea of guilty in criminal and traffic cases. One criminal or traffic case can have multiple counts on which the defendant is found guilty or pleads guilty. At present, the judiciary in Cook County only assesses fees on one count per case, regardless of the number of counts with convictions or pleas of guilty in the case. County revenue would be substantially increased under existing law if the judiciary acted in compliance with existing authority by assessing fees for each count on which there is a conviction or plea of guilty, which is the system the judiciary in DuPage County and other Illinois counties utilize. We will work with the Cook County judiciary again on this issue to see if they will begin assessing fees per count rather than per case. This would significantly increase revenue to the County.

Also, the **Cook County Law Library fee** is authorized by statute to be set at up to \$21, and it is presently set at \$18 by Cook County Ordinance. 55 ILCS 5/5-39001; Cook County Code of Ordinances Sections 32-1, Chapter 50, and 50-31 (pp. 70-73, attached).

I look forward to working with your administration as the various County agencies collectively and creatively move toward a budget that is satisfactory to the citizens of Cook County while continuing to support the essential functions of County government.

You may have your staff contact our General Counsel, Elena Demos, at (312) 603-6946, and our Chief Financial Officer, Wasiu Fashina, at (312) 603-5044, if further information is required. I may be reached at (312) 603-5071 or (312) 617-6050.

Sincerely,



Dorothy Brown
Clerk of the Circuit Court of Cook County

cc: Kurt Summers, Chief of Staff
Tariq Malhance, Chief Financial Officer

~~Dilina Wilks~~, Chief of Staff, Office of the Clerk of the Circuit Court of Cook County
Wasiu Fashina, Chief Financial Officer/Comptroller, Office of the Clerk of the Circuit
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Elena Shea Demos, General Counsel, Office of the Clerk of the Circuit Court of Cook County