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VIA FACSIMILE/U.S. MAIL

May 17, 2004

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David R. Williams, Executive Director
Georgia Superior Court Clerks' Cooperative Authority
Suite 100
1875 Century Boulevard
Atlanta, Georgia 30345

Re: House Bill 1EX

Dear David:

This follows up our discussion of last week regarding House Bill 1EX.

One of the issues that we discussed concerns O.C.G.A. § 15-21A-6(a) as enacted by House Bill 1EX. O.C.G.A. § 15-21A-6(a) provides as follows:

In addition to all other legal costs there shall be charged to the filing party and collected by the clerk an additional fee of \$15.00 in each civil action or case filed in the superior, state, probate, recorder's, mayor's, and magistrate courts except that municipalities, counties and political subdivisions shall be exempt from such fee. Without limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari, applications by personal representatives for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of a civil nature. Any matter which is docketed upon the official dockets of the enumerated courts and to which a number is assigned shall be subject to such fee, whether such matter is contested or not.

We specifically discussed the effective date of the additional \$15.00 fee. Section 27 of House Bill 1EX provides relevantly that Sections 1 through 16, 25, 26, 27 and 28 become effective upon approval by the Governor or upon it becoming law without such approval. The above-quoted language of O.C.G.A. § 15-21A-6(a) appears in Section 10 of House

David R. Williams
May 17, 2004
Page 2

Bill 1EX. Thus, the additional \$15.00 fee will become effective upon the Governor's approval of the Bill.

Another issue that we discussed concerns the language providing that "municipalities, counties, and political subdivisions shall be exempt from such fee." From my review, it appears that the quoted language provides that when a municipality, county or other political subdivision is a filing party, the additional \$15.00 fee is not to be charged. As you know, O.C.G.A. § 15-6-77(e) addresses costs in civil cases and specifically provides that "[n]othing contained in this subsection shall be deemed to require advance payment of such sum by the state, its agencies, or political subdivisions." The use of different language in these two provisions seems to indicate an intent to specifically exclude municipalities, counties and political subdivisions from the new \$15.00 fee while not specifically addressing the State and its agencies. I understand that the quoted language from O.C.G.A. § 15-6-77(e) is generally interpreted by clerks of superior court not to exempt the state, its agencies and political subdivisions from the filing fee, but rather to excuse them from paying the fee in advance.¹

We also discussed the filings to which the additional \$15.00 fee under O.C.G.A. § 15-21A-6(a) applies. Similar language is used in O.C.G.A. § 47-14-51(a) which provides as follows regarding the Superior Court Clerks' Retirement Fund of Georgia:

In addition to all other legal costs, the sum of \$1.00 shall be charged and collected in each civil suit, action, case, or

¹ I am aware of 1984 Op. Att'y Gen. U84-7 which concludes that when child support petitions and other documents are filed on behalf of the state in superior courts, filing fees may not be required. 1984 Op. Att'y Gen. U84-7 relies on O.C.G.A. § 1-3-8 which provides that "the state is not bound by the passage of a law unless it is named therein or unless the words of the law are so plain, clear, and unmistakable as to leave no doubt as to the intention of the General Assembly" as well as language in a prior version of O.C.G.A. § 15-6-77(b)(1) which provided that "Nothing contained in this paragraph shall be deemed to require such deposit of the state, its agencies, or political subdivisions." It is worth noting that the language regarding the state, its agencies and political subdivisions has changed over time. In 1991, the General Assembly amended O.C.G.A. § 15-6-77(b)(4) to provide relevantly that "Nothing contained in this subsection shall be deemed to require such sum of the state, its agencies, or political subdivisions." Ga. Laws 1991, p. 1324 § 1. In 1993, the General Assembly moved the language to O.C.G.A. § 15-6-77(e)(2) and amended the language to provide that "Nothing contained in this subsection shall be deemed to require advance payment of such sum by the state, its agencies, or political subdivisions." Ga. Laws 1993, p. 1544, § 9.

David R. Williams

May 17, 2004

Page 3

proceeding filed in the superior courts or in any other court of this state in which a clerk eligible for membership in this retirement fund is clerk, including, without limiting the generality of the foregoing, all adoptions, charters, certiorari, applications by a personal representative for leave to sell or reinvest, trade name registrations, applications for change of name, and all other proceedings of a civil nature, filed in the superior courts or other such courts.

The filings to which the fee for the Superior Court Clerks' Retirement Fund of Georgia applies have been broadly interpreted. 1978 Op. Att'y 78-63 concludes that the fee applies to "Each and every proceeding related to charters or articles of incorporation." 1981 Op. Att'y Gen. 81-56 concludes that the fee "should be charged and collected upon the filing of articles of amendment, articles of merger, and articles of dissolution as well as articles of incorporation." 1988 Op. Att'y Gen. U88-11 concludes "that the legislature intended these provisions reach each and ever proceeding of a civil nature." Based on the similarity between the language used in O.C.G.A. § 15-21A-6(a) and that used in O.C.G.A. § 47-14-51(a) as well as the prior interpretations of O.C.G.A. § 47-14-51(a), I am inclined to conclude that the additional \$15.00 fee generally applies to each and every proceeding of a civil nature.

It is worth noting that after 1988 Op. Att'y Gen. U88-11, the General Assembly enacted O.C.G.A. § 15-6-77(e)(4) which now expressly provides that:

No fee or cost shall be assessed for any service rendered by the clerk of superior court through entry of judgment in family violence cases under Chapter 13 of Title 19 or in connection with the filing, issuance, registration, or service of a protection order or a petition for a prosecution order to protect a victim of domestic violence, stalking, or sexual assault. A petitioner seeking a temporary protective order or a respondent involved in a temporary protective order hearing under the provisions of Code Section 19-13-3 or 19-13-4 shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. The reasonable cost of the interpreter shall be paid by the local victim assistance funds as provided by Article 8 of Chapter 21 of this title. The provisions of this paragraph shall control over any other conflicting

David R. Williams
May 17, 2004
Page 4

provisions of law and shall specifically control over the provisions of Code Sections 15-6-77.1, 15-6-77.2, and 15-6-77.3.

(emphasis added).² Last week, we discussed whether the additional \$15.00 fee under O.C.G.A. § 15-21A-6(a) would apply to filings that are specifically excluded from the imposition of costs and fees by O.C.G.A. § 15-6-77(e)(4). My conclusion is that the additional \$15.00 fee does not apply to such filings. I am inclined to reach this conclusion for a couple of reasons. First, the use of the phrase “In addition to all other legal costs” in the first line of O.C.G.A. § 15-21A-6(a) seems to indicate an intent that the additional fee only applies to filings that are subject to other costs. The filings addressed in O.C.G.A. § 15-6-77(e)(4) are not subject to other costs. Second, when enacting legislation, the General Assembly is presumed to act with knowledge of the existing law and new laws are to be construed in harmony with existing law. Buice v. Dixon, 223 Ga. 645, 647 (1967). It seems to me that a construction of O.C.G.A. § 15-21A-6(a) that imposes that additional \$15.00 fee on those filings that are otherwise subject to fees is the most harmonious interpretation with existing law.

I hope that this is helpful. If you would like to discuss, please contact me.

Please keep in mind that this letter is informal advice and does not constitute the official or unofficial opinion of the Attorney General.

Sincerely,



W. WRIGHT BANKS, JR.
Senior Assistant Attorney General

WWB/me
enclosure

² The first version of O.C.G.A. § 15-6-77(e)(4) to eliminate the fee for family violence cases was enacted in 1996. Ga. Laws. 1996, p. 883, § 1.