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**DOUGLAS J. PETERSON**
ATTORNEY GENERAL

15-018
NO.
STATE OF NEBRASKA
OFFICIAL
DEC 17 2015
DEPT. OF JUSTICE

SUBJECT: L.B. 338 – Imposition of a Docket Fee for Original Actions and Modifications for Child Support and Custody Filed by Never- Married Parents

REQUESTED BY: Senator Lydia Brasch
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested an opinion from this office regarding the interpretation of Neb. Rev. Stat. § 33-107.02 and the need to enact L.B. 338 which you introduced last year. You state that "L.B. 338 would mandate that never-married parents who are seeking 'a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access as defined in section 43-2922' also be charged the $65 docket fee, of which $50 is credited to the Parenting Act Fund." As you explain, the Legislature enacted this fee in 2007 in order to subsidize the costs of mediation in custody and parenting time disputes.

## Background

The Parenting Act, now found at Neb. Rev. Stat. §§ 43-2920 to 43-2943 (2008 and Cum. Supp. 2014), was substantially revised by L.B. 554, Laws 2007. Under the Act as revised, mediation on the issues of custody and parenting time is mandatory in some

instances. Parents may also participate in mediation on a voluntary basis. Neb. Rev. Stat. §§ 43-2936 and 43-2937. Section 43-2942 provides that the parties are responsible for the costs of mediation, which costs are charged according to a sliding fee scale if the court orders the parties to mediation. You point out that the Parenting Act fee imposed by § 33-107.02 subsidizes the costs incurred by mediation centers in providing mediation to indigent and low-income parents involved in custody and parenting disputes.

L.B. 554 amended certain statutes found in Chapter 33 in regard to docket fees. Section 33-107.02(1) (2008) provides as follows:

> A docket fee of sixty-five dollars shall be collected by the clerk of the county court or the clerk of the district court for each proceeding to modify a decree of dissolution or annulment of marriage, a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access as defined in section 43-2922. . . . Fifteen dollars shall be credited to the Legal Aid and Services Fund, and fifty dollars shall be credited to the Parenting Act Fund.

There is a separate docket fee imposed by Neb. Rev. Stat. § 33-106.03 that pertains only to actions for dissolution of marriages. Your questions concerning the imposition of docket fees for filings made by unmarried parents would clearly not be governed by that statute.

**Discussion**

We first note that the statement of intent for L.B. 338 states that L.B. 338 "provides a docket fee for original actions and modifications for custody, parent time, visitation, and other parental access filed by unmarried parents." Introducer's Statement of Intent for L.B. 338, 104th Neb. Leg., 1st Sess. (January 29, 2015). In your request letter, you inquire about the applicability of the docket fee to never-married parents who seek a modification. You also inquire about the applicability of the docket fee when never-married parents file a cross complaint or motion to intervene in an action initiated by a county attorney.

It seems to us that there are several categories of pleadings or actions that might be filed by never-married parents. One of the parents could file an action for paternity or parental support under Neb. Rev. Stat. §§ 43-1401 to 43-1418. The initial filing in such an action would involve neither an action for dissolution subject to § 33-106.03 nor an action seeking modification subject to § 33-107.02 and neither docket fee would apply.

An unmarried parent could subsequently file an application for modification of a prior decree of child support or child custody, parenting time, or visitation. In our view, such a filing with regard to a decree entered in a private action brought by the parent would require the $65 docket fee called for by § 33-107.02(1). Statutory language should generally be given its plain and ordinary meaning and where the words of the statute are plain, direct and unambiguous, no interpretation is necessary to ascertain their meaning. *State v. Mena-Rivers*, 280 Neb. 948, 791 N.W.2d 613 (2010); *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985). When construing a statute, courts will attempt to

discover legislative intent from the language of the act. A court will also "construe statutes relating to the same subject matter together to maintain a sensible and consistent scheme, so that effect is given to every provision." *Tracfone Wireless, Inc. v. Nebraska Public Service Comm'n*, 279 Neb. 426, 433, 778 N.W.2d 452, 459 (2010). In our view, the language of § 33-107.02(1) which imposes a $65 docket fee for "a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access", on its face, applies to applications for modifications of prior awards, whether filed by previously married parents or never married parents.

The answer is less clear if the original proceeding to determine paternity or parental support pursuant to §§ 43-1401 to 43-1418 was filed by a county attorney and one of the parents later files an application for modification of an award entered in that proceeding. Subsection (2) of § 33-107.02, the statute imposing the additional docket fee, provides that a "proceeding filed by a county attorney or authorized attorney, as defined in section 43-1704, . . . shall not be subject to the provisions of this section." It is clear that the county attorney need not pay the $65 docket fee if he or she files a petition to determine paternity or parental support or a subsequent application for modification. However, if one of the parents later seeks to modify the decree entered in a proceeding initiated by the county attorney, one could argue that the parent would be subject to the docket fee applicable to modifications. Yet, the statutory language provides that the "proceeding" is not subject to the docket fee provision and use of the term "proceeding" may indicate that none of the pleadings filed in a proceeding initiated by the county attorney would trigger the docket fee. "Proceeding" has been defined in a general sense as "[T]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment." Black's Law Dictionary 1324 (9th ed. 2009). For this reason, you may wish to proceed with legislation to clarify the applicability of the docket fee in this situation.

Finally, your request letter also refers to a situation in which never-married parents file a cross complaint or motion to intervene in a paternity or parental support action brought by the county attorney. If we understand your reference correctly, it seems to us that those pleadings would likely be filed prior to the entry of a decree and may, thus, not be considered "modifications" of a prior award so as to fall under the current docket fee requirement. However, you state that such pleadings are filed subsequent to an order of child support. If you intend for these pleadings to trigger the docket fee, clarifying legislation may be necessary.

## Conclusion

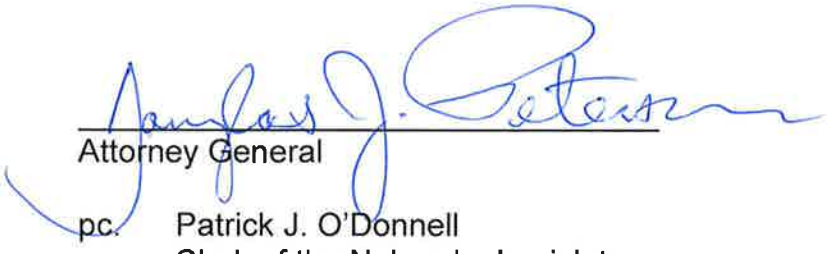
In your request letter, you explain that the docket fee provided for at § 33-107.02 is not currently imposed on never-married parents in certain situations. For the reasons stated above, we agree that the applicability of the docket fee is not entirely clear and that, if you wish to ensure that the docket fee is assessed, amendment of the statute would be appropriate.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

Lynn A. Melson
Assistant Attorney General

Approved by:



Attorney General

pc: Patrick J. O'Donnell
Clerk of the Nebraska Legislature

09-531-29