



STATE OF NEW JERSEY
NEW JERSEY LAW REVISION COMMISSION

Revised Final Report

Relating to

Title 22A

January 25, 2010

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Title 22A

Introduction

Title 22A contains the general fees pertaining to civil and probate actions. The Title also includes provisions regarding fees not paid to the courts and the disposition of various fees.

The updating of this Title has been inconsistent. While certain sections have remained reasonably current, others have been updated less frequently and some remain unchanged since their enactment in 1953. The New Jersey Law Revision Commission Staff has proposed certain sections of the Title for removal as anachronistic. Other sections have been consolidated and reorganized. The sections proposed for removal are listed below. Other proposed changes are explained in the Comment sections of the draft statute.

The largest single substantive change proposed by this draft is the inclusion of a flat-fee designed to replace the hundreds of different mileage fees assigned to individual municipalities throughout the State. Another substantive change is the adjustments of the filing fees for an initial paper in an action to make that fee nearly uniform across the courts. Other fees were modestly adjusted to round them to the nearest dollar and to make most of the fee amounts multiples of \$5 or \$10.

The draft also contains an adjustment of the costs for the copying of some documents to more closely align with the charges permitted by the Open Public Records Act (47:1A-5). OPRA provides for charges on a sliding scale, ranging from \$0.75/per page to \$0.25/per page. Since all other fees in this section were rounded to the nearest dollar, the copying fees in prior drafts were reduced to \$1 in this Title. With regard to the copying of other documents in the Superior Court, including the Surrogates' offices, reference is made to the fee schedule to be established by the Supreme Court pursuant to *Court Rule* 1:38 (specifically 1:38-9). References to self-service copy fees no longer include a per-page fee, and instead state that the charge for the copies shall be the actual cost associated with providing them in response to the available case law. NO final determination has been made regarding those costs since consolidated cases remain pending on appeal. Other copying costs, particularly those applicable to the Surrogates, have remained at their current statutory levels in order to avoid substantial negative budgetary consequences resulting from the hybrid nature of the Surrogates' offices (they serve as parts of the Superior Court but their operations (facilities, salaries and benefits) are paid by the counties).

In addition to the foregoing, the draft attempts to correct what appears to be an error in the recently enacted 22A:4-17(b) [effective September 2009] as shown in 22B:9-2 below.

The non-substantive changes found in this report include rearranging, consolidating and updating of the sections. Since the draft represents a modification of

the entirety of the Title, the statutory sections have been renumbered as 22B. Sections proposed for removal from the Title are as follows:

1. 22A:1-5 was substantially eliminated since the dollar amounts listed were inconsistent with other provisions of the statute (that section includes, for example, a fee for serving a subpoena of \$0.35 and mileage reimbursement of \$0.04/mile).

2. 22A:1-6 was replaced, in the draft, with the section including the proposed flat-fee mileage calculation substitute.

3. 22A:2-2 includes costs in the Supreme Court such as counsellor's fees of \$10 and \$20. This section was eliminated as not representative of actual costs (it sets the award for prevailing on a contested motion or application at \$10, and for arguing a cause before the Supreme Court, \$25). In this section and in similar sections mentioned below, it was of concern to Staff that the costs recovered were no longer meaningful and that the value of the time spent to prepare the application for costs would routinely and substantially exceed the costs received.

4. 22A:2-5 was eliminated by consolidating it with 22A:2-1. 22A:2-5 simply states that the fees in the Appellate Division are the same as those in the Supreme Court.

5. 22A:2-9 lists costs that may be awarded to a party in the Law Division, ranging from \$10 to \$50. The section was eliminated as not representative of actual costs (examples include costs awarded for an appeal to the Law Division, \$10; for a voluntary dismissal, \$20) [see 22A:2-2 above for a more detailed explanation of the reasoning].

6. 22A:2-10 lists costs that may be awarded to a party in Chancery Division, ranging from \$10 to \$125. While some of the amounts listed are higher than those found in other sections pertaining to costs, this section was also eliminated for reasons similar to those mentioned in 22A:2-2 above.

7. 22A:2-11 also addresses costs that might be awarded and provides that if the matter does not proceed to a final judgment, the attorney is allowed one-half of the amount normally allowable as costs. Like the costs sections discussed above, this one was eliminated.

8. 22A:2-14 was eliminated because Staff was advised that it is no longer relevant.

9. 22A:2-16 lists fees for recording documents and making copies in probate matters. This section was eliminated on the basis that it is inconsistent with other fees listed elsewhere in the Title and because the fees are calculated per folio.

10. 22A:2-17 addresses the issue of fees for proceedings begun prior to the effective date of the Title (1953). This section was eliminated with the expectation that no such actions remain.

11. 22A:2-25 lists fees for filing, entering or docketing papers with the Deputy Clerk of the Superior Court. This section was eliminated as apparently duplicative of, and inconsistent with, other listed fees.

12. 22A:2-26 lists a motion fee of \$9 and was eliminated because that fee is inconsistent with other motion fees listed in the Title.

13. 22A:2-33 reduces fees for the auditing, stating or allowance of accounts under circumstances where the estate does not exceed \$200 or \$500. This section, too, was eliminated as no longer relevant because the dollar amounts have not been updated since 1953.

14. 22A:2-34 includes fees of \$0.25 and \$0.12 payable by the Surrogate to the Clerk of the Court for recording the name and other limited information about each testator or intestate. This section was eliminated as obsolete since the amounts to be paid have not been updated since 1953.

15. 22A:2-41 sets forth the amounts to be included in taxed costs for witnesses and appraisers and was eliminated for same reasons as similar provisions.

16. 22A:2-42 sets forth the amounts to be included as taxed costs for attorneys' fees in Special Civil Part matters, replevin actions and matters in which a party has been adjudged in contempt.

17. 22A:3-6 provides for imprisonment for failure to pay costs assessed against a party at a rate of one day of imprisonment for each \$1 of costs imposed and was eliminated for that reason.

18. 22A:4-2 includes fees of the surveyors general and was eliminated as no longer relevant.

19. 22A:4-6 provides for a fee of \$3 to be paid to the County Clerk for attending sessions of the Law Division in the county and was eliminated as obsolete.

20. 22A:4-11 includes a mileage fee of \$0.10/mile and was eliminated as inconsistent with other mileage fees established by the Title.

21. 22A:4-12 includes fees for searches performed by the Clerk of the Court or the County Clerks and Registers of Deeds and Mortgages and was eliminated on the basis that it no longer appeared to be relevant and, if it is still valid, it is inconsistent with other provisions of the Title.

22. 22A:4-14 includes fees for administering oaths, taking affidavits, taking proof of a deed and taking acknowledgements and was eliminated as no longer relevant.

General Civil

22B:1-1. Payment or waiver of fees

a. Attorneys for the parties shall be responsible for the payment of all fees charged to their clients by the clerks of the Supreme Court and the Superior Court unless the court directs otherwise.

b. All fees allowed by law for the services of the Supreme Court, Superior Court, and any justice or judge thereof, whether such services are performed in open court or in chambers, shall be collected and accounted for by the clerks of the courts in the same manner as fees allowed to such clerks.

c. The clerk of a court shall not charge any New Jersey State officer conducting State business, or any State department, board, body or commission, for the filing of a paper or the rendering of a service for which a fee is normally charged.

d. Unless otherwise indicated, no service described in this Title shall be performed by a clerk, surrogate, officer or other individual from whom the service is sought unless the specified fee for that service is paid in advance or payment is waived.

e. The clerk of the court shall issue process, subpoenas, or any other order without requiring the payment of a fee by any duly authorized ethics committee.

f. The payment of fees to any New Jersey court or its clerk may be waived by the court if a party demonstrates indigency and seeks and obtains the appropriate relief.

g. The collection of any fee included in this Title may be waived in particular circumstances by order of the Supreme Court, or by an order of any court pursuant to authority granted by a court rule.

h. In any proceeding in which the papers filed with the clerk of the court are exceptionally numerous, or other work done by the clerk is exceptionally onerous, the clerk may apply for an order allowing a reasonable additional fee or the court may enter such an order on its own motion. Any such order shall direct how and by whom the fee shall be paid.

i. Unless otherwise directed by the clerk or the court, all fees payable to the court shall be payable to the Treasurer, State of New Jersey.

Source: 22A:1-7; 22A:2-3; 22A:2-4; 22A:2-18; 22A:2-21; 22A:2-22; 22A:2-23; 22A:2-37.1; 22A:4-16.

COMMENT

This section contains general provisions consolidated from various sections of the statute. The language in subsection: a. is 22A:2-21; b. is 22A:4-16; c. is 22A:2-22; d. is section 22A:2-37.1 (similar language appears in 22A:4-19 and 22A:5-1); e. is 22A:2-3; f. is 22A:1-7; g. is 22A:2-3 and 22A:2-23; h. is 22A:2-18; and i. is new.

Subsection e. was revised to remove references to ethics committees of a county or state bar association since comments suggested that all ethics matters are now handled by the Office of Attorney Ethics.

22B:1-2. Appeals and the Supreme Court and Superior Court, Appellate Division

a. The fees payable in matters on appeal to the Supreme Court and the Appellate Division of the Superior Court are as follows:

(1) Filing a: notice of appeal, notice of cross-appeal, notice of petition for certification, notice of cross-petition for certification or notice of petition for review, \$250.

(2) Filing a motion in a pending action, \$30.

(3) Filing an order to show cause, \$45.

(4) Filing the first paper on any motion, petition or application if not in a pending action or if made after dismissal or entry of judgment, other than withdrawal of money deposited in court, \$30.

b. On appeals to the Law Division of the Superior Court from judgments of a municipal court and any agency whose final judgments are required by court rule to be appealed to the Law Division, for filing a notice of appeal, \$75.

c. For the following services of the clerk of the Supreme Court or Appellate Division, in addition to copying costs, the fee shall be:

(1) Affixing the seal of the Court, \$10.

(2) Exemplification, including the affixing of the seal of the Court, \$25.

(3) All other papers or services, \$5.

(4) Commissions on appeals accounts and deposits of security for costs: 2% on \$100 or less; 1 1/2% on the excess of \$100.

(5) Withdrawal of money deposited in court where the sum to be withdrawn is:

(A) less than \$100, no fee;

(B) \$100 or more but less than \$1,000, \$5;

(B) \$1,000 or more, \$10.

d. The first copy of any order, judgment, pleading or other paper, shall be certified by the Clerk of the Supreme Court or the Clerk of the Superior Court, Appellate Division, and supplied to the attorney or litigant, free of charge if a copy is furnished to the clerk for certification.

e. A court may award costs of suit to a prevailing party in accordance with Court Rule 2:11-5. Costs shall also include:

(1) The statutory witness fee;

(2) The costs of taking depositions, when taxable by order of the court;

(3) The costs for publication where publication is required;

(4) The costs paid for a certified copy of a document or a map, recorded or filed in any public office, obtained for use in a trial or any other proceeding;

- (5) Sheriff's fees;
- (6) All filing and docketing fees paid to the clerk of court;
- (7) Other reasonable and necessary expenses taxable according to the course and practice of the court, or by express provision of law or rule of court.

Source: For subsection a.: 22A:2-1; 22A:2-20; 22A:2-27; for subsection b.: 22A:2-6; 22A:2-7; 22A:2-19; 22A:2-20; 22A:2-29; 22A:4-12; and for c. 22A:2-3 and 22A:2-8.

COMMENT

After being combined in an earlier draft, the provisions concerning appeals, the Supreme Court and the Appellate Division were separated from those pertaining to the Superior Court generally in this draft. Those provisions had been found in subsection d. in a former draft, and have been moved to subsection a. in this draft.

Now, in subsection a., the former Section 22A:2-1 and the former Section 22A:2-5 have been combined as a.(1) and (4). 22A:2-5 was deleted since it only referenced the former section and indicated that the same fees, costs and allowances applied to the Appellate Division. Subsection a.(2) is new. The language concerning orders to show cause was included as a.(3). The filing fee for an order to show cause is proposed at \$45, even though that exceeds the fee for a standard motion, since it has been suggested that an order to show cause is more labor-intensive for the court personnel than a typical motion. The appeal language from Section 22A:2-27 was imported and inserted as a.(5), so that it was included with the other appeal language. The last sentence of that section indicating where the money was to be paid was removed as unnecessary after December 31, 1994. This subsection was modified to make the language more current and accurate. Subsection a.(6) was from 22A:2-20 and was deleted as no longer necessary.

All of subsection b. was deleted as pertaining only to the Superior Court, Law and Chancery Divisions with the exception of the order to show cause language which was inserted into subsection a. as explained above.

The language of subsection c. was modified to include a reference to the Supreme Court since the Clerk of that Court also affixes the seal of the Court and performs other actions set forth in that subsection. An attempt was made to eliminate all language that did not pertain to actions in the Supreme Court or Appellate Division. The former section 22A:2-19 was consolidated here as c.(11). The amount for pages in excess of five was raised from \$0.75 to \$1 per page to be consistent with other costs imposed in this Title. The section was otherwise substantively unchanged except for the clarification regarding papers provided at the disposition of the matter, and the elimination of the final sentence, which changes were proposed by the AOC.

Subsection e. was 22A:2-3 and 22A:2-8. It has been replaced with references to the Court Rules for the sake of simplicity and clarity. The language has been modified and consolidated. In g.(1), the phrase "statutory witness fee" replaces "legal fees of witnesses, including mileage for each attendance" and the reference to "masters, commissioners and other officers" was stricken.

22B:1-3. Civil Proceedings in Law and Chancery Division; Exceptions

a. The fee for filing the first paper in the Law and Chancery Divisions, excluding the Probate Part, Special Civil Part, and penalty enforcement actions, is as follows:

- (1) By the plaintiff, \$250.
- (2) By any party filing an answer with a counterclaim or a third party claim, \$250.

(3) By any party other than the plaintiff filing any other initial paper, \$150.

b. Upon the filing, entering, docketing, or recording of the following papers or documents by any party to any action in the Law or Chancery Divisions of the Superior Court, excluding Special Civil Part, unless otherwise indicated the fee is as follows:

(1) Motion in a pending action, \$30.

(2) First paper on any motion, petition or application, if not in a pending action or if made after dismissal or judgment entered, other than withdrawal of money deposited in court, \$30.

(3) Order to show cause, other than an order to show cause constituting original process, \$45.

(4) Transfer of action from Law Division to Special Civil Part, no charge.

(5) Transfer of an action from Special Civil Part to Law Division, \$30 plus the difference in the filing fee.

(6) Issuing a subpoena, \$5.

c. Upon the filing, entering, docketing, or recording of the following papers or documents by any party to any civil action in the Law or Chancery Divisions excluding Special Civil Part, the fee is as follows:

(1) Certification, recording assignment of judgment or release, issuing and recording executions, except as otherwise provided herein, \$5.

(2) Affixing the seal of the Court, \$10.

(3) Exemplification, including the affixing of the seal of the Court, \$25.

(4) Warrant of satisfaction, \$25.

(5) Recording of documents for which no fee is otherwise specified, and all other papers or services provided by the clerk, \$5.

(6) Commissions on deposits for security for costs: 2% on \$100 or less; 1 1/2% on the excess of \$100.

(7) Commissions on paying out trust fund accounts, including all funds, moneys or other assets brought into and deposited in court: 2 1/2% on the first \$100; 2% on the next \$900; 1 1/2% on the excess of \$1,000.

(8) Withdrawal of money deposited in court where the sum to be withdrawn is:

(A) less than \$100, no fee;

(B) \$100 or more but less than \$1,000, \$5;

(C) \$1,000 or more, \$10.

(9) Entering judgment on bond and warrant by attorney and issuance of one final process, or recording of judgment in the civil judgment and order docket, or satisfaction of judgment or other lien, \$35.

(10) Docketing judgments or orders from other courts or divisions including the Special Civil Part, \$35, but no fee shall be paid by any municipal court to docket a judgment of conviction and amount of assessment, restitution, fine, penalty or fee pursuant to 2C:46-1(a).

d. The first copy of any order, judgment, pleading or other paper, if provided at the disposition of the matter, shall be certified by the Clerk of the Superior Court, as the case may be, and supplied to the attorney or litigant, free of charge, if a copy is furnished to the clerk for certification.

e. The following fees shall be charged for bonds, bail and recognizances in civil actions only:

(1) Recording all official bonds with acknowledgment and proof of their execution, \$10;

(2) Filing all papers related to recognizance, \$30;

(3) Filing discharge, attachment bond, \$10;

(4) Filing satisfaction of or order discharging filiation bond, \$10;

and

(5) Recording or discharging sheriff's bond, \$10.

f. A court may award costs of suit to a prevailing party in accordance with Court Rule 4:42-8. Costs shall include those provided for by section 22B:1-2(e).

Source: For subsection a.:22A:2-6 and 22A:5-1; for subsection b(1) 22A:2-6; for subsection b.(2): 22A:2-7; for subsection b.(3): new; for subsection b.(4) 22A:2-7; for subsection b. (5) new; for subsection c.: 22A:2-6; 22A:2-7; 22A:2-19; 22A:2-20; 22A:2-29; 22A:4-12; for d.: 22A:2-1; 22A:2-20; 22A:2-27; for e. 22A:2-29; for f.: 22A:2-3 and 22A:2-8.

COMMENT

The word "proceeding" was eliminated in the first sentence of a. as redundant and potentially confusing. The language of the first sentence was modified since the original language, phrased in the negative, seemed to be a source of confusion.

The Chancery Division language from Sections 22A:2-12 and 22A:2-13 was consolidated in a. so that the Law Division and Chancery Division sections could be combined. It appears that continuing the practice of separate provisions for those two Divisions was more a historical artifact than a practical necessity, so they have been combined in this section. The fee for the filing of the first paper was raised to \$250 for all first papers, not just divorce or dissolution of a civil union, to make the initial filing in most of the courts consistent. References to Special Civil Part and the Surrogate's Court and the Tax Court were removed as they are dealt with in separate sections.

The filing fee for subsection a.(3) was raised at the suggestion of AOC and the language modified for clarity at AOC's suggestion. The language from 22A:2-12 regarding the forwarding of \$25 of the filing fee to the Clerk of the Superior Court was eliminated in this draft.

Subsection b.(2) was moved from the prior 22A:2-7 to this section on the recommendation of a reviewer. Subsection b.(3) is new. The filing fee for an order to show cause is proposed at \$45, even though that exceeds the fee for a standard motion, since it has been suggested that an order to show cause is more labor-intensive for the court personnel than a typical motion. Subsection b.(4) is new. In subsection b.(5), the filing fee for the transfer of a matter from Special Civil Part to Law Division was proposed at \$45. The fee is presently \$15, and, since the litigant is required to pay the difference in the filing fee on transfer, it is not clear why \$45 is required. In this draft, the fee was raised from \$15 to \$30 since it

involves a motion in the Law Division and the fee for motions is \$30. It had been suggested that the fee for a transfer should be applied in either case, although if the differential in the filing fee is not refunded to the litigant upon transfer from the Law Division to the Special Civil Part, that would appear to be inequitable. Subsection b.(5) includes the subpoena reference here, rather than in the later section dealing with fees for actions generally taken post-disposition, which is where it previously appeared.

Subsections c.(1) – (5) are a reworking of the information initially included in subsections a. and b. of the November 2008 draft at the recommendation of the AOC, which suggested that the fee structure should more properly distinguish between those activities which do not involve the seal of the court or bench time, and those that do.

22A:2-7(b) was eliminated as no longer necessary. In Subsection c.(9), the fee for entering a judgment on the bond and warrant by an attorney was increased to match the fee set forth for what seems to be the same thing in 22A:2-29 and to match the fee for docketing or recording of a judgment. The former Section 22A:2-20 has been consolidated here as parts of subsections c.(7) – (10).

In subsections b. and c., Special Civil Part was expressly excluded to clarify that the provisions of those sections, unless they specifically refer to Special Civil Part, do not apply to that Part.

Parts of the former 22A:4-12 were consolidated with this section and eliminated on the grounds that it is no longer relevant. The original subsection d. was removed and relocated to the appellate section.

In subsection e., the initial sentence was changed to clarify that this applies only to civil proceedings. The language pertaining to bonds, bail, and recognizances were formerly a part of Section 22A:2-29. This section was created as a part of the division of the former 2-29 into fees payable to the Superior Court and fees payable to the County Clerk as a result of discussions with a sampling of County Clerk's offices. In this section, the fee for filing and entering a recognizance of civil bail was increased to \$30 to match the fee for filing and entering a recognizance set forth in Section 22A:2-29. The reference to a filiation bond was removed as it was suggested by commenters that it was no longer used.

Subsection f. was 22A:2-3 and 22A:2-8. It has been replaced with reference to the Court Rules and section 22B:1-2e. for the sake of simplicity and clarity.

22B:1-4. Fees in Special Civil Part of the Superior Court, Law Division and civil actions in municipal court

a. In all civil actions and proceedings in the Special Civil Part of the Superior Court, Law Division, the fees shall be:

(1) Filing of small claim or complaint in tenancy, one defendant	\$25
Each additional defendant	\$5
(2) (A) Filing of complaint or other initial pleading containing a counterclaim, cross-claim or third party complaint in all other civil actions, whether commenced without process or by summons, capias, replevin or attachment where the amount	
i) exceeds the small claims monetary limit, one defendant	\$50
ii) does not exceed the small claims monetary limit, one defendant	\$35
(B) Each additional defendant	\$5

(3) Filing of appearance or answer to a complaint or third party complaint in all matters except small claims	\$25
(4) Service of Process: The fees for service of shall be \$7 or the rate set by the Administrative Director of the Courts, whichever is higher. The fee for service of process shall not exceed the postal rates for ordinary and certified mail, return receipt requested, and may include an administrative fee that shall not exceed \$ 0.25 for each defendant served with process by mail. The total service of process fee shall be rounded upward to the nearest dollar. For the purposes of this paragraph, service of process shall be charged per defendant and means: (A) the simultaneous mailing by ordinary and certified mail, return receipt requested, to a defendant at the home address provided by the plaintiff; (B) the simultaneous mailing by ordinary and certified mail, return receipt requested, to a defendant at place of business or employment with postal instructions to deliver to addressee only; (C) the reservice of a defendant by mail; (D) the substituted service of process by the clerk upon the Chief Administrator of the New Jersey Motor Vehicle Commission in addition to the substituted service fee provided below; and (E) the service of a wage execution by mail to a federal agency.	
(5) Reservice of summons or other original process by court officer, each defendant	\$20
(6) Substituted service of process by the clerk upon the Chief Administrator of the New Jersey Motor Vehicle Commission	\$20
(7) Jury of six persons	\$50
(8) Issuing warrant for possession in tenancy	\$15
(9) Issuing warrant to arrest, commitment or writ of capias ad respondendum, each defendant	\$15
(10) Issuing or filing writ of execution or an order in the nature of execution, writs of replevin and attachment issued subsequent to summons	\$15
(11) Advertising property under execution or any order	\$15
(12) Selling property under execution or any order	\$15
(13) Issuing exemplified copy of a document, including affixing the seal of the court:	
(A) Two pages	\$25
(B) Each additional page	\$1
(14) Issuing a subpoena	\$5

b. Fees and costs for civil proceedings in municipal court shall be the same as those prescribed for similar services in the Special Civil Part.

Source: 22A:2-37.1; 22A:2-43; 22A:5-1.

COMMENT

Section 22A:2-43 and parts of section 22A:5-1 have been consolidated with this section. The distinction in the fee for the first defendant in an action and any subsequent defendant has been removed as unnecessary.

This section was modified to delete references to fees effective before and after five years from the effective date of amendments to the statute in 2003. The assumption is made that any changes to the statute as a result of this project would be effective after the time that the new fee structure was to be implemented,

so that language is included here as a.(4). Subsection a.(4) was modified again in 2009 to reflect the change in the law to address the problem of the sunseting of the service by mail provisions and to reflect the fee of \$7 in effect at the time of the draft of the final report. Subsection a.(13)(A) was increased to \$25 at the recommendation of AOC since an exemplification involves bench time and, as a result, is a more costly process than a mere certification, in addition, the language was modified slightly so it tracks more closely the language applicable in the civil part generally. Subsection a.(14) was added since the general language applicable to the civil part now specifically excepts Special Civil Part and, unlike other items appearing in the civil part section, the subpoenas are issued by the Special Civil Part.

Mileage fees have been removed from the Title and replaced by a flat fee. Subsection c. was eliminated as inaccurate. Section 22A:4-12 and 22A:4-14 were eliminated as no longer applicable.

22B:1-5. Tax Court

a. The fees payable to the Tax Court are as follows:

(1) Unless otherwise herein provided, the filing fee for the first paper shall be \$250 except for actions in the Small Claims Division. There is no filing fee charged for a counterclaim or responsive pleading filed by the taxing district.

(2) If a complaint or counterclaim in an action to review a real property tax assessment includes more than one separately assessed parcel of property in common ownership the first paper filing fee prescribed by subsection a.(1) shall be charged for the first separately assessed parcel of property included in the complaint and \$50 shall be charged for each additional separately assessed parcel of property included in the complaint.

(3) If a complaint or counterclaim in an action to review a real property tax assessment includes more than one parcel of real property in common ownership separately assessed pursuant to the provisions of *N.J.S. 46:8A-26* (Horizontal Property Act) or *N.J.S. 46:8B-19* (Condominium Act), the filing fee for the first separately assessed parcel of property of the property owner shall be the first paper filing fee prescribed by subsection a.(1) and \$50 for each additional separately assessed parcel of property of said property owner included in the complaint.

(4) If a complaint in an action to review a state tax, such as sales tax, gross income tax, corporation business tax or others, includes more than one separate state tax, the filing fee shall be \$200 for the first separate state tax and \$50 for each additional state tax included in the complaint.

b. Proceedings in the Small Claims Division of the Tax Court:

(1) The fee for the filing of a complaint or counterclaim in the Small Claims Division is \$35.

(2) If the court determines that the matter is not within the small claims jurisdiction or for other reasons should not be disposed of as a small claims case, the party filing the complaint shall be charged a fee in the amount of the difference between the fee for filing a first paper provided by subsection a.(1) and the small claims filing fee.

(3) If a complaint or counterclaim involves multiple causes of action and the matter is within the small claims jurisdiction the filing fee shall be \$35 for the first state tax or separately assessed parcel of property and \$10 for each additional state tax or separately assessed contiguous parcel of property having the same ownership included in the complaint.

(4) When properties are in the same ownership and part of the same master deed, if a complaint or counterclaim in an action to review a real property tax assessment includes more than one parcel of real property separately assessed pursuant to the provisions of *N.J.S. 46:8A-26* (Horizontal Property Act) or *N.J.S. 46:8B-19* (Condominium Act), the filing fee for the first separately assessed parcel of property of the property owner, if all of the parcels of the property owner are within the jurisdiction of the small claims division, shall be \$35 for the first separately assessed parcel of property of the property owner and \$10 for each additional separately assessed parcel of property of said property owner included in the complaint. When property has been assessed separately pursuant to the provisions of *N.J.S. 46:8A-26* (Horizontal Property Act) or *N.J.S. 46:8B-19* (Condominium Act), separately assessed properties that are not in common ownership may not be combined in one complaint or counterclaim.

(5) No fee shall be paid upon the filing of a complaint in the small claims jurisdiction in an action where the sole issue is eligibility for any homestead credit, rebate, or refund program administered by the Division of Taxation or a senior citizen's or veteran's exemption or deduction.

c. The filing fee for any papers not specified in this section shall be the same as that charged for filing that paper in the Law or Chancery Divisions of the Superior Court.

Source: *Rule 8:12*.

COMMENT

The language of this subsection was taken from the Court Rules and included here for the sake of consistency.

Probate Proceedings

22B:2-1. Proceedings in the Probate Part of the Chancery Division

The following fees shall be paid to the Surrogate of the county of venue for performing services in all probate proceedings in the Superior Court, Chancery Division, Probate Part, and to the Surrogate's Court, as appropriate. Said fees shall constitute the entire fee from commencement to final disposition of the cause, unless provided otherwise in this section:

a. First paper:

(1) Upon the filing of the first paper in a Probate Part action, the filing fee is the same as the initial filing by the plaintiff as prescribed by 22B:1-3a.

(2) Upon the filing of an answer, answering affidavit or motion returnable on the return day, pursuant to *Rule 4:67-4(a)*, the filing fee is the same as the initial filing for parties other than the plaintiff prescribed by 22B:1-3a; and

(3) Upon the filing of the first paper on an application for relief filed subsequent to the final judgment, \$30.

b. Subsequent proceedings:

(1) Adjournment or continuance	\$15
(2) Issuing miscellaneous orders of Court, each page	\$5
(3) Proceedings regarding appointment of guardian ad litem	\$25
(4) Assignment of legacy or interest, per page plus \$5 for county clerk certificate if necessary	\$10
(5) Except for motions referenced in a.(2) above the fee for filing a motion is the same as prescribed for motions in the Law and Chancery Divisions of the Superior Court	
(6) Services regarding assignment for benefit of creditors not including accounting	\$75
(7) Minimum charge for all other papers in Chancery Division, Probate Part	\$5

Source: 22A:2-15; 22A:2-30; 22A:2-35.

COMMENT

Changes were made to the former 22A:2-30 based on comments received from individuals knowledgeable about the duties and responsibilities of Surrogates.

In subsection a., the fees were modified to make them equivalent to those paid in other Law or Chancery Division actions. The language has been revised since the earlier draft to replace the listed fee with language tying the fee to the fee imposed in the Law and Chancery Divisions. In subsection a.(1) a substantial block of the language was removed as unnecessary after discussions with several individuals from Surrogates Offices. In subsection a.(2), the language was modified at the request of the Surrogates so that it more closely reflected the practice and to make it less confusing. In subsections a.(1) and a.(2), the internal statutory reference was corrected to 22B:1-3a since it had incorrectly referred to another statutory section in the earlier draft.

The subsection b.(1) language charging a fee for an adjournment or continuance was first removed because several Surrogates Offices indicated that such a fee is not charged. That language has since been re-inserted at the request of COANJ. The Motion fee language was linked to the fee for motions in the Superior Court to insure that the fees remain consistent if the motion fee in the Superior Court changes. In subsection b.(4), the fee was changed from \$5 to \$10 to correct an error in the earlier draft. Subsection b.(5) was modified in an effort to avoid confusion.

22B:2-2. Proceedings in the Surrogate's Court

The following fees are payable to the Surrogate for proceedings in the Surrogate's court:

a. Accounting:

(1) Auditing, stating, reporting and recording, microfilming or photostating, accounts of executors, administrators, guardians, trustees, assignees, but excluding advertising costs:

(A) Up to and including \$2,000 no additional fee

(B) From \$2,001 to \$10,000	\$100
(C) From \$10,001 to \$30,000	\$125
(D) From \$30,001 to \$65,000	\$150
(E) From \$65,001 to \$200,000	3/10 of 1%, but not less than \$300
(F) In estates exceeding \$200,000	4/10 of 1%, but not less than \$400
(2) For each page of accounting, in excess of one,	\$5
(3) In computing the amount of an estate to fix the fees of the surrogate for auditing and reporting the account, the balance from the prior account shall be excluded.	
b. Letters of Administration:	
(1) General administration, including preparation of application, bond, surety affidavits, necessary recording, microfilming or photostating, indexing, filing, reporting to the Division of Taxation in the Department of the Treasury and the Clerk of the Superior Court of original letters including power of attorney, authorization to accept service of process, and death certificate,	\$125
Other documents, per page	\$5
(2) Exemplifying administration,	\$75
(3) Certified copy of administration,	\$50
(4) Affidavits of surviving spouse or next of kin where the value of the real and personal assets of the estate does not exceed \$20,000 or \$10,000, respectively,	\$5 per \$100 or part; not not in excess of \$50
c. Administration ad prosequendum	\$50
d. Letters of Guardianship for a minor:	
(1) Granting letters of guardianship, acceptance of guardianship and filing of power of attorney,	\$50
(2) Filing affidavits of estates of minors where value of real and personal estate does not exceed \$5,000, per page,	\$5
(3) Filing miscellaneous petitions and orders, per page,	\$5
e. Inventories: Filing, entering and recording, microfilming or photostating, inventory, not exceeding one page, and affidavits of appraisers and executor,	
Each additional page,	\$25 \$5

For all services in appointment of appraisers \$25

f. Payment of proceeds of judgment in favor of a minor: Fees payable on each withdrawal of proceeds of a judgment in favor of a minor that is on deposit with the surrogate, including petitions and orders provided and prepared by the surrogate, in lieu of bond, pursuant to 3B:15-16 and 3B:15-17 (in addition to fees payable under Letters of Guardianship):

(1)	Up to and including \$500,	\$10
(2)	From \$501 to and including \$1,000,	\$20
(3)	From \$1,001 to and including \$5,000,	\$30
(4)	From \$5,001 to and including \$10,000,	\$40
(5)	From \$10,001 to and including \$25,000,	\$50
(6)	From \$25,001 to and including \$50,000,	\$60
(7)	In excess of \$50,000,	\$100

g. General Surrogate's services: The fees for Surrogate's services not otherwise provided for are as follows:

(1)	Probate of a will of not more than two pages, with letters	\$100
	Each additional page,	\$ 5
(2)	Probate of a will of not more than two pages without letters,	\$50
	Each additional page,	\$5
	The services here exclude letters, surrogate's certificate and qualification of executor.	
(3)	Probate of each codicil, not exceeding one page,	\$25
	Where codicil requires an additional witness,	\$5
(4)	Reopening probate proceedings for qualification of executor or taking proof of extra witness,	\$25
(5)	Admitting one witness in a probate proceedings,	\$0
	Each additional witness,	\$5
(6)	Recording and comparing, microfilming or photostatting, each additional page of will or codicil,	\$5
(7)	Filing, entering, issuing and recording, microfilming or photostatting, proceedings in commission for deposition of foreign witness to a will or codicil,	\$35
(8)	Producing plain extra copy of a will, per page,	\$3
(9)	Producing certified extra copy of a will, per page,	\$5
(10)	Producing certified copy of a will with proofs for New Jersey county, not exceeding two pages, including will and codicil,	\$50
	Each additional page,	\$5
(11)	Filing wills without probating (as where there are no assets), each page,	\$5
	Cover letter stating no assets,	\$5
	Death Certificate,	\$5
(12)	Exemplifying a will for another state, not exceeding two pages, including will and codicil, plus cost of Certificate of	

Secretary of State when required,	\$85
Each additional page,	\$5
(13) Recording, microfilming or photostatting, docketing, indexing, filing and reporting to the Division of Taxation in the Department of the Treasury an exemplified copy of will and probate proceedings from another state, per page,	\$5
(14) Recording, microfilming or photostatting, docketing, indexing and filing a certified copy of will with proofs from New Jersey, per page,	\$5
(15) Recording, microfilming or photostatting certified transcripts of wills admitted to probate and probate proceedings or letters of administration and administration proceedings granted by the Superior Court, per page,	\$5
(16) Acceptance of trustee and letters of trusteeship, including one certificate,	\$50
 h. Miscellaneous Charges:	
(1) Issuing or re-issuing short certificates,	\$5
(2) Issuing subpoenas, each,	\$5
(3) Authorization of process,	\$5
(4) Recording, microfilming or photostatting all papers not otherwise provided for, each page	\$5
(5) Making copies not otherwise provided for, each page	\$3
(6) Filing transcript of death certificate,	\$5
(7) Filing the power of attorney, per page	\$5
Plus cost of postage.	
(8) Search fee, per estate	\$10
(9) Proceedings relative to appointment of a guardian ad litem,	\$25
(10) Renunciation, per person, filing, entering, and recording or photostatting,	\$5
(11) Caveat, filing or withdrawing,	\$25
(12) Combined refunding bond and release, per page, filing, entering, microfilming, and recording or photostatting,	\$5
Additional charge for county clerk's certificate,	\$5
(13) Release, per page	\$5
Additional charge for county clerk's certificate,	\$5
(14) Filing all papers not otherwise provided for,	\$5
(15) Photocopying of a two-page will, plain copy,	\$5
Each additional page,	\$3
(16) Service of Process by Surrogate under 3B:14-48	\$25
(17) Processing a returned check, plus bank fee	\$20
(18) Duplicating or copying of information stored on such media as microfiches, digital tapes, high density disks, optically scanned and recorded materials or any other medium used to record or preserve records, shall be upon payment of the fee established by the Supreme Court pursuant to <i>Court Rule</i> 1:38-9.	

i. When it appears that the estate of any testator, intestate, minor or ward, is less than \$200, no fees shall be charged upon actions for probate of a will, granting administration or guardianship up to and including the letters issued and copies of such letters as well as the fees of filing and recording and with respect to an inventory.

j. When it appears by affidavit of persons applying for letters testamentary, of administration or of guardianship that the estate, real and personal, of any testator, intestate, minor or ward, who died while in the active military or naval service of the United States in time of war, or in time of emergency, or that such minor or ward is the child of a person who died while in the active military or naval service of the United States in time of war, or in time of emergency, no fees shall be charged upon actions for the probate of a will in those cases, where any part of the estate of the testator is bequeathed or devised to the surviving spouse, the father or mother, the brothers or sisters or any of the lineal descendants of the testator, granting of administration or guardianship up to and including the letters issued and copies of such letters.

k. All other fees not herein expressly prescribed payable to the Surrogate, ~~other than for adoption~~, and all costs to a party in any action, motion or proceeding in the Probate Part shall be the same as allowed for similar services in the Law and Chancery Divisions of the Superior Court. All fees shall be used in the county in which they are collected.

l. Other papers or services: The minimum charge for all other papers or services not herein expressly prescribed by the surrogate, \$5.

Source: 22A:2-15; 22A:2-30; 22A:2-31; 22A:2-35; 22A:2-36.

COMMENT

In subsection a.(1) the fees were initially modified in an effort to make them more consistent with other fees. Concerns were expressed regarding the level of New Jersey's fees in this area, however, and there was not consensus on the propriety of modifying the fees, and they were returned to the levels reflected in the current statute. The inappropriately high fee in earlier drafts of subsection a.(1)(F) was simply the result of a math error. The reference to drawing judgment was removed as antiquated. Subsection a.(3) was originally modified to reference a prior "trust" account since the language of the existing language was not clear but individual commenters from Surrogates Offices advised that limiting it to trust accounts improperly excludes guardianships, executors, etc. so the word "trust" was removed. The original subsection a.(4) was removed because it was suggested that all accountings should pay the required fee and none of the individuals offering comments on this section had ever heard of a situation that was covered by this specific provision. Also in subsection a. the original reference to preparing notice of settlement of accounts and sending those notices to the newspaper was eliminated since it is no longer included in the Court Rules.

This Section previously contained language pertaining to commissions on deposits. After discussion with the Surrogates, that language was removed as no longer necessary. The basis for the subsection was no longer commonly known to the Surrogates and it appeared that it might date from the time when the Surrogates performed functions with regard to unclaimed property now performed by the State.

Limited changes have been made to subsection e. to this time to reflect informal comments received. Subsection d.(4) was changed to revert back to the current statutory language.

In subsections g., the fees pertaining to certification and exemplification of documents were returned to those reflected in the original statute. These fees differ from the fees imposed in the Law and Chancery Divisions for what appeared to be the same service and AOC recommended reducing them as disproportionately high. Additional information provided by the Surrogates, however, revealed that a certification or exemplification performed by a Surrogates office generally involves more lengthy documents and a more labor intensive process, including significant staff time, to locate and compile the pages (sometimes retained in different files and formats) to be certified or exemplified than are generally required in the Law or Chancery Divisions. Discussions with the Surrogates regarding the differences in the work required of the Surrogates offices from the work required of the Law and Chancery Divisions with regard to things like certification and exemplification resulted in a return of those fees to their current statutory levels. In addition, a discussion of the significant budgetary impacts associated with the reduction in copying fees, because of the hybrid nature of the Surrogates' offices (they serve as parts of the Superior Court but their operations (facilities, salaries and benefits) are paid by the counties) led to the restoration of those fees to their original levels as well.

Changes were made to the fee schedule in subsection h. Subsection h.(1) was modified and h.(2) eliminated after discussion with individuals from Surrogates Offices. It was suggested that there should be no charge for validating short certificates since those certificates should be deemed valid. Subsection h.(3) was changed to significantly reduce the cost associated with the issuance of a subpoena to make that cost more in line with the cost imposed by the courts generally. It was suggested that the removal of original subsections (5), (6) and (8) was appropriate. Subsection h.(15) was revised to reflect a charge of \$5 per renunciation since the renunciation by each individual requires the same amount of staff time and effort. Subsections h.(22) and (23) were reordered since the new subsection (23) is the only item without a specified cost. The existing language was initially modified to track OPRA and to incorporate language from Directives applicable to the surrogates that have been issued by the Administrative Director of the Courts. The OPRA statute was not specifically mentioned since it does not, by its terms, apply to the courts, but certain language was included since the goal of this revision was to rationalize the fees and achieve parity, where appropriate, with other similarly situated entities. Since there were objections to including the OPRA-type language, the subsection was again revised to reflect the change in the *Court Rules* which took effect on September 1, 2009 calling for the establishment of a fee schedule by our Supreme Court applicable to copies of records, including Surrogates' records.

Subsection i. is new in this Revised Final Report. Initially removed as no longer relevant since the dollar amount had not been changed since 1953, this slightly revised language from 22A:2-31 has been reinserted in the Report. The Bergen County Surrogate's Office advised that since January 1, 2009, the office acted in accordance with this statutory section in 30 estate matters. Staff was advised that a decedent who dies testate, regardless of the estate's value, must have their will probated if necessary, at a minimum fee of \$100. The issue also affects those who die intestate since a common situation involves cases in which there is no estate but the decedent's medical records are being sought. Apparently, it is equally common to have a situation in which the decedent resided in a nursing home, or long term care facility and the facility maintained a personal needs account (PNA) for the individual while they were a resident patient. These accounts are used for such things as haircuts, toiletries and small incidentals. Generally, a PNA would not contain, nor would the facility want it to contain, a balance in excess of \$100. Attempting to close this kind of an account becomes cost prohibitive if this statute is eliminated, causing many individuals to simply forfeit the remaining balance.

Subsection j. is new in this Revised Final Report. It is the current 22A:2-32, which had been removed as no longer relevant since the dollar amount had not been changed since 1953, but was reinserted with slightly revised language after comments from the Surrogates. The part of the language that represents more than a slight revision is the removal of the \$1000 limit to qualify for free probate of the estate under the circumstances described in the subsection.

Section 22A:2-36 has also been consolidated with this section as *l*. Modest changes to some of the fees have been made simply to make the charges multiples of \$5. Photocopying has been made \$1 per page throughout. The fees for marking true copies and swearing of witnesses have been stricken as no longer commonly used.

Municipal Court Proceedings

22B:3-1. Fees in criminal, quasi-criminal and traffic proceedings.

a. In every criminal, quasi-criminal and traffic proceeding in municipal court, the court may impose a charge not exceeding \$35 for court costs in any proceeding in the municipal courts. No charge, however, shall be made for the services of any salaried police officer of the State, County or Municipal Police.

b. In municipal court proceedings, the court shall impose court costs within the maximum limits authorized by this section, as follows:

(1) For every violation of any statute or ordinance \$5
The court shall not suspend the collection of this court cost assessment. These court cost assessments shall be collected by the municipal court administrator for deposit into the Automated Traffic System Fund, created pursuant to 2B:12-30.

(2) For each fine, penalty and forfeiture imposed and collected under the authority of law for any violation of the provisions of Title 39 or any other motor vehicle or traffic violation in this State \$1
The court shall not suspend the collection of this court cost assessment. These court cost assessments shall be collected by the municipal court administrator for deposit into the "Emergency Medical Technician Training Fund" established pursuant to 26:2K-54 et al.

(3) For every violation of any statute or ordinance, to fund the Statewide modernization of the Automated Traffic System \$5
The court shall not suspend the collection of this court cost assessment. These court cost assessments shall be collected by the municipal court administrator for deposit into the Automated Traffic System Statewide Modernization Fund, established pursuant to 2B:12-30.1.

c. The first copy of any certificate of judgment, certified copy of a paper filed with the court, or copy of a public record filed with the court shall be provided at no additional charge to a party and shall be deemed included within the maximum allowable court costs authorized by subsection b. The provisions of this Title shall not prohibit the taxing of additional costs, when authorized by 39:5-39, for an additional:

(1) Certificate of judgment \$5
(2) Certified copy of paper filed with the court as a public record, per page \$5
Each additional page \$1
(3) Copy of a public record filed with the court, each page \$1

d. In addition to any fine imposed, when a supplemental notice is sent for failure to appear on a return date, the cost shall be \$10 per notice, unless satisfactory evidence is presented to the court that the notice was not received.

e. The fees for any service provided by court officers shall be the same as that paid to Special Civil Part officers for providing the service.

f. If defendant is found guilty of any offense, he shall pay the court costs, but if, on appeal, the judgment is reversed, the costs shall be reimbursed to defendant. If defendant is found not guilty, the costs shall be paid by the prosecutor, except when the Chief Administrator of the New Jersey Motor Vehicle Commission, a peace officer, or a police officer was the prosecutor.

g. Money received in accordance with this section by a municipal court or a court with jurisdiction in one municipality shall, unless otherwise provided by law, be accounted for by the court and paid to the municipal treasurer and to the officer respectively within 30 days from its receipt.

Source: 22A:3-4; 2A:3-5.

COMMENT

These sections remain substantially unchanged. Modest changes to some of the fees have been made simply to make the charges multiples of \$5. The AOC has cautioned that even these modest changes will have a significant impact as a result of the volume of cases heard in the municipal courts. The title was changed to make it more accurate. Subsection a. was eliminated as covered by the Penalty Enforcement Law.

Subsection b. was streamlined and some new language added at the recommendation of the AOC to clarify that the court may, in the case of a nominal offense, impose court costs of less than \$35. Subsection d. was modified to clarify the costs for documents. Subsection f. was eliminated as duplicative of fees set forth elsewhere and a reference was included to those fees. Section 22A:3-5 has been consolidated with this section.

Juror and witness fees

22B:4-1. Payment of juror fees

Every person serving as a grand or petit juror in a New Jersey court, other than a person compensated pursuant to 2B:20-16, shall be paid \$35 for each day's attendance at the court.

Source: 22A:1-1.1.

COMMENT

Although this section of the statute was updated fairly recently, the current \$5 per diem for jurors would not even be sufficient to enable a juror to purchase a lunch for him or herself in or near most of the courthouses in the State.

The changes in this section were made in response to Assembly bill 2125, which was introduced in February of 2008 and which proposed an increase in compensation for jurors. This section also addresses the problem posed by the fact that grand jurors serve on non-consecutive days (as do petit jurors on trials that are carried) and thus would not qualify for increased compensation under the current statutory scheme. \$35 per day certainly represents a significant increase in the payment to jurors but it may not make sense to pay a juror less for a day of jury service than is paid to a witness for an appearance. A2125 increased the juror payment to \$40 per day. This draft retains the \$35/day already included in the statute. A2125 also creates a conflict with 2B:20-16 that this draft avoids.

The report was revised after Union County Counsel brought to the attention of Staff a conflict between the language of the draft and *N.J.S.A. 2B:10-3(c)* which requires the State, not the County, to pay juror fees. Since the goal of the report language was simply to clarify, and not change, the source of the payment, the language regarding payment by the County was stricken to avoid unnecessary confusion.

Subsection b. was eliminated as inconsistent with the information contained in this Title and unnecessary since the Assignment Judges do not rely on this section of the statute for authority to act with regard to juror payment.

22B:4-2. Fees of witnesses

a. A witness required to attend or appear before: a court; a committee of the Legislature directed to conduct an investigation or inquiry; a commissioner or commissioners; a master; a referee; an arbitrator; an officer taking a deposition; or any proceeding issuing out of any court shall receive, from the party requiring the appearance:

(1) For attendance in the witness's county of residence, \$25 per day.

(2) For attendance in a county other than the witness's county of residence, \$45 per day.

b. The fees in subsection (a) shall not be paid either when the witness is attending the proceeding as a governmental agent and the hearing is before a legislative committee or a governmental agency is a party to the proceeding.

Source: 22A:1-4.

COMMENT

This section was initially proposed for elimination on relevance grounds. The reimbursement in the current statute is so low as to be nearly meaningless. The current per diem for witnesses would not likely even cover parking costs for the witness, let alone the cost of transportation to and from the facility at which they are required to appear. Informal comments, however, suggested that it is important to retain this section, but that the calculation of mileage for this purpose can be prohibitively complex, so the suggestion was made to incorporate a flat rate for witness compensation.

Subsection (b) is new. It replaces current statutory language which calls for the compensation of the secretary of State or a clerk who appears as a witness. The language was changed because it is not clear why an individual attending on behalf of the State, county or municipality who will be compensated by his or her department, should receive additional compensation from the party compelling attendance.

Court Officers

22B:5-1. Sheriff's Officers and other officers; general fees

a. Sheriffs and other officers authorized to perform the following services shall receive the following:

(1) Serving every summons and complaint, attachment, or any other process issuing out of the Superior Court:

(A) For the first defendant or party on whom the process is served \$40

(B) For every additional defendant, per person \$35

(C) Spouses or civil union or domestic partners who are both named in process shall be considered one defendant, except when living separately.

(2) Serving <i>capias ad respondendum</i> , <i>capias ad satisfaciendum</i> , warrant of commitment, or writ of <i>ne exeat</i>	\$65
(3) Serving a single execution against goods or lands and making an inventory and return	\$65
A mileage fee of \$15 may be charged for each additional levy on the same writ.	
(4) Returning a writ to court	\$20
(5) Executing a writ of: possession and return; attachment; sequestration; or <i>replevin</i> issued out of any court	\$65
_A mileage fee of \$15 may be charged for each additional attempt on the same writ.	
(6) Rescheduling the execution of a writ of possession	\$15
(7) All services of the sheriff or other officer pursuant to a claim of exemption on execution or other civil process for seizure of property, including the three appraisers who shall be public employees	\$20
(8) Special request charges, including requests for service of information subpoenas, service of documents at unusual hours, service of turn-over orders, and other items not listed elsewhere in this Title	\$15
(9) Miscellaneous charges:	
(A) Producing a plain copy, per page	\$1
(B) Producing a certified copy, per page	\$5
(C) Copies, per page, self service	actual cost
(D) Processing a returned check, plus bank fee	\$20
(E) Service by certified mail, per item mailed, the fee shall be the same as the fee set by the Administrative Office of the Courts for the service of process in Special Civil Part.	

b. If a sheriff's officer makes three or more good faith attempts to serve a document and is unable to do so through no fault of the officer, the officer may charge a single \$15 fee to offset the miles traveled during the attempts but may not retain the entire service fee and shall return the balance of the fee to the party who provided it. If a document is required to be re-served for any reason, the party seeking re-service shall again pay the entire service fee.

c. The sheriff shall be entitled to retain 5% out of the total amount of fees collected on a forfeited recognizance, whether before or after execution, or from amercements, or from fines and costs on conviction, on indictment or otherwise, whether these fees are payable to the State or to the County treasurer.

d. When a duly authorized ethics committee appointed by the Supreme Court, requires the service of a process or subpoena issued pursuant to 22A:2-4, no fee shall be required for making such service.

e. If more than one document involving the same case is served on the same individual at the same time, only one fee, namely the highest fee applicable to any of the documents, may be charged.

Source: 22A:4-8; 22A:4-9; 22A:4-10.

COMMENT

This section was originally the consolidation of several sections, which were then divided into two sections, a general section (this one) and a section pertaining to execution sales (below). The fees in this section have been modified, as in other sections, so that they are multiples of \$5 or \$10.

In addition to the rounding of the numbers, the certain of the dollar amounts were modified to include what would otherwise have been a separate mileage fee since the mileage section was deleted.

Even after sheriff's officers agreed that imposing a flat fee for mileage was a reasonable option, there were outstanding issues and questions, including those pertaining to the costs for re-service, and for multiple attempts at service, etc. The determination was made that since the flat fee approach was akin to payment for providing a service, rather than simply driving a certain number of miles, the mileage fee would be added to the charge for providing each service that would otherwise require a payment for mileage, eliminating the need for a separate mileage section.

It was suggested by Sheriff's officers that the language in the original a.(1)(A) regarding the service of a summons specifically referring to matrimonial/dissolution actions was confusing because it appeared to imply that the fee did not apply to all actions. The confusing language was removed.

Comments from Sheriffs officers suggested the deletion of old subsections a.(3), (7), (8) and (9) as obsolete. Old subsection (10) was later removed from the draft as obsolete as well since the Sheriffs questioned did not recall using the provision and it was not clear what it referred to. Subsection a.(4) had been modified to remove the reference to the inventory and return by sheriff's officers since the process, and the provision of a dollar to each of three appraisers, is clearly a historic relic. There is not, however, any process that may be readily substituted for the requirement that the sheriff's officers perform this function and, as a result, it has been retained. Subsection a.(7) has been returned to the statute for the same reason. New language was added to subsections a.(3) and a.(5) to address the fact that writs of execution are valid for two years and an attorney may, on a single writ, request that a sheriff's officer perform a bank levy, a personal property levy, rents due, levy, etc. If that is the case, then the additional mileage fee was added to defray some of the expenses incurred by the sheriff's officer. Similarly, sheriff's officers are sometimes requested to levy on multiple banks located within the county, and the additional mileage fee is added to defray some of the expenses incurred during the travel from one location to the next. A new subsection a.(6) was added, similar to the language in the execution section pertaining to the rescheduling of an execution sale, to reflect the fact that when an eviction has to be rescheduled, the sheriff's officer needs to set a new date, print new service orders, post the new sale information on the premises and send a confirming letter to the attorneys involved in the case. Subsections a.(8) and (9) were inserted at the request of preliminary informal comments received from Sheriff's officers and a.(9) was modified after the last draft to include a provision regarding self-service copies. The language pertaining to self-service copies was revised to remove a charge of \$0.25 per page and replace it with the language "actual cost" to reflect the case law determinations made in the Law Division which determinations are presently pending on appeal. Further revision may be appropriate after this issue has been finally determined by the Court since there are conflicting decisions arising out of cases throughout the State.

Subsection b. is new. It is included to address situations in which a sheriff's officer acts in good faith in an effort to serve documents but is unable to do so through no fault of the officer and situations in which new attempts at service are requested by a party. The Sheriffs objected to the language in the first sentence of subsection b., indicating that they routinely retain both the fee for service and the mileage fee whether the documents are served or not, noting that they sometimes do more work when the documents are not able to be served. The Commission considered the issue and declined to change the language contained in the report. Subsection e. is new, included after a review of some of the statutes in other states.

Increases of various fees were proposed as a result of the time since the last increase but such action was deemed beyond the scope of this project.

22B:5-2. Fees payable on execution sales

a. The sheriff shall be entitled to the following fees on execution sales:

- | | |
|---|-----------------|
| (1) the minimum fee for an execution sale | \$50 |
| (A) on all sums not exceeding \$5,000 | 6% |
| (B) on all sums exceeding \$5,000 | 4% on
excess |
| (2) Making statement of execution, sales and execution fees | \$10 |
| (3) Advertising the property for sale | \$20 |
| (4) Posting property for sale | \$20 |
| (5) For the crier of the venue, when the sheriff proceeds to sell,
per day the crier shall be actually employed in such sale | \$5 |
| (6) Every adjournment of a sale | \$30 |
| (7) Drawing and making each deed to a purchaser of real
property | \$75 |
| (8) Drawing and making a bill of sale to the purchaser of personal
property, when required or demanded | \$20 |
| (9) On an execution against wages, commissions, salaries
and monies collected to satisfy the writ, including bank levies, the
sheriff shall charge the same percentage fees on all sums collected as the
percentage fees applicable in cases of execution sales. | |
| (10) When the execution is settled without actual sale, including
cases in which the matter is resolved with the plaintiff, the officer shall receive
one-half of the amount allowed in case of sale. | |

b. When more than one writ of execution is issued by the Superior Court on the same judgment, each sheriff to whom the execution is directed and delivered shall be entitled to collect and receive from the defendant named in the writ of execution the fees allowed by law for making a levy and return and statement thereon, or for such other services as may be actually performed by that sheriff. The sheriff who collects the amount named in the execution or any part thereof, shall be entitled to the legal percentage upon whatever amount may be so collected by that sheriff. If a judgment is settled between the parties and the amount due thereon is not collected by either sheriff, the percentage on the amount collected which would be due the sheriff if only one execution had been issued shall be equally divided among the several sheriffs who received executions.

c. The sheriff shall file a taxed bill of costs with the clerk of the court that issued the execution, within such time as the court shall direct, or forfeit all fees. If a sheriff charges for services not performed, or not allowed by law, or takes greater fees than is allowed by law, the sheriff shall be liable for the damages sustained by the aggrieved party, including a penalty of \$30, which shall be recovered in a summary proceeding.

Source: 22A:4-8.

COMMENT

This section was originally the consolidation of several sections, which were then divided into two sections, a general section (above) and a section pertaining to execution sales (this section).

Comments from Sheriff's officers indicated that there are no deputy sheriffs and that the term should be stricken from a.(3). The commenters also raised the issue of adjournments, indicating that while only one adjournment is permitted, the reality is that there are sometimes multiple adjournments (supported by at least one decision by the Court). Sheriff's offices that currently charge for each adjournment would like to continue to do so. Subsections a.(9) and (10) were modified based on language proposed by COANJ.

22B:5-3. Compensation of Special Civil Part Officers

a. Unless otherwise specified, the serving officer shall receive \$20 for service of any summons, notice, third party complaint, subpoena, writ or court order for each party on whom the document is served. The provisions of this section shall not apply to cases on behalf of the State where the officer serving the document is paid a salary or per diem.

b. If a judgment is vacated for any reason after a court officer has made a levy, and subsequently the judgment is reinstated or the case is settled, the fee for the court officer shall again be taxed in the costs and collected on payment of the judgment or settlement amount.

c. The Clerk of the Special Civil Part shall pay to the officers designated by the Assignment Judge to serve process as follows:

(1) Warrant to arrest, capias, or commitment, for each defendant served	\$30
(2) Serving writ and summons in replevin, taking bond and any inventory, one defendant	\$25
Each additional defendant	\$20
(3) Serving warrant for possession in tenancy	\$25

d. The Clerk of the Special Civil Part shall pay to officers designated by the Assignment Judge to serve wage executions on a federal agency an amount equal to the established fee for each wage execution served.

e. If a Special Civil Part Officer makes three or more good faith attempts to serve a document and is unable to do so through no fault of the officer, the officer may charge a single \$15 fee to offset the miles traveled during the attempts but may not retain the entire service fee. If a document is required to be re-served, for any reason, the party seeking re-service is again required to pay the service fee.

f. If more than one document involving the same case is served on the same individual at the same time, only one fee (the highest fee applicable to the service of any of the documents) may be charged.

g. For each execution of a warrant for possession in tenancy, the plaintiff shall pay directly to the Special Civil Part Officer an all-inclusive fee of \$65. No other fee shall be charged or collected by the officer.

h. The following fees for officers of the Special Civil Part shall be taxed in the costs and collected on execution, writ of attachment or any order amounting to an execution on a final judgment, or on a valid and subsisting levy of an execution or attachment that may be the effective cause in producing payment or settlement of a judgment or attachment:

- | | |
|---|--------|
| (1) For advertising property under execution or any order | \$10 |
| (2) For selling property under execution or any order | \$10 |
| (3) On every dollar collected on execution, writ of attachment, or any order, | \$0.10 |

Source: 22A:1-5; 22A:1-6; 22A:2-37.2.

COMMENT

Subsection a. consolidates the original Section 22A:1-5 with 22A:1-6 since it was not clear why there should be a difference in the compensation for service of writs and subpoenas. In addition, the rate of compensation was changed from compensation by mile, to a flat fee compensation which fee was calculated based on a review of the statutory mileage award and the service fee (in the current statute, the mileage award is \$0.04/mile and the service fee is \$.035).

In addition to the rounding of the numbers, the certain of the dollar amounts were modified to include what would otherwise have been a separate mileage fee since the mileage section was deleted.

Subsections b.-d. are from 22A:2-37.2. Language duplicating that set forth in other sections of the statute was removed. Any service fees different from the \$5 set forth in a. are included in this subsection.

The first sentence of subsection e. is new, and is included to match a similar provision was included in the section pertaining to fees that may be charged by sheriff's officers. The second sentence is from 22A:2-37.2.

Subsection f. is new.

Subsection g. is new. It was proposed by AOC, which recommendation was supported by the Report of the Conference of Assignment Judges' Subcommittee on Special Civil Part Officer Fee for Evictions. Currently, the statute imposes a fee of \$15 plus mileage for a warrant of possession in a tenancy action and \$10 plus mileage is paid to the Special Civil Part officer but Administrative Directive #12-80 allows the officers to charge additional amounts for additional services pertaining to eviction with the agreement of the landlord and subject to limits set by the Assignment Judge. This has resulted in a significant disparity in the amounts charged from county to county, ranging from \$35 to \$85. The new language adds a \$50 fee, plus \$15 to cover mileage under the initially proposed flat fee mileage rate, for a total of \$65 that will be uniform throughout the State.

County and Municipal Clerk Fees

22B:6-1. Fees payable to the County Clerk

The following fees are payable to County clerks and registrars of deeds and mortgages:

a. Recording of documents pertaining to real property generally:	
(1) For recording any instrument:	
(A) First page	\$30
(B) Each additional page or its part	\$10
(C) Each rider, insertion, addition, or any map, plat or sketch filed or recorded pursuant to 48: 3-17.3, section 2(c)	\$10
(2) For entering a marginal notation	\$10
(3) For filing a lis pendens in a foreclosure action:	
(A) First page	\$30
(B) Each additional page or its part	\$10
(C) Notation	\$10
(4) For preparing and transmitting to the assessor, collector, or other custodian of the assessment map of any taxing district, the abstract of an instrument evidencing title to realty	\$10
(5) For the cancellation of any mortgage or tax sale certificate	\$20
(A) Each additional volume and page	\$20
(6) For filing and recording notice of federal tax lien or other federal lien or certificate discharging such lien	\$25
(7) For filing a notice of settlement	\$20
(8) For filing each map, plat, plan or chart (except when presented by the State or its agencies or filed pursuant to 48:3-17.3(c)	\$55
(9) For indexing any recorded instrument in excess of 5 parties, per each name in excess of 5	\$6
(10) For recording tax sale certificate, lien, deed, or related instrument by a municipality	\$10
(11) For disclaimers	\$15
(12) For reimbursement agreements	No fee
(13) Construction lien:	
(A) Filing construction lien	\$15
(B) Filing notice of unpaid balance, discharge	\$15
(C) Notation	\$10
(D) Bond	\$25
(14) Physician or hospital liens:	
(A) Filing each notice of physician's lien	\$15
(B) Entering upon the record the discharge of a physician's lien	\$15
(C) Filing each hospital lien claim	\$15
(D) Discharge of hospital lien	\$15
b. Recording of documents not pertaining to real property, generally:	
(1) For recording veteran's discharge papers	No fee
(2) Certified copy of veteran's discharge	No fee
(3) Recording firefighter's certificate	No fee
(4) Registering physician	\$25
(5) Nonbusiness corporation, recording:	
(A) Certificates of incorporation of churches,	

religious societies and congregations	\$25
(B) Amendments to certificates of incorporation of churches, religious societies and congregations,	\$25
(6) Bank merger agreements, recording:	
(A) First page	\$25
(B) Each additional page	\$5
(C) Certificates, each	\$5
(7) Tradenames, firms, partnerships, filing:	
(A) Certificate of name, (see 56:1-1 et seq.)	\$50
(B) Amendment	\$50
(C) Certificate of dissolution of tradename (56:1-6 et seq.)	\$25
(D) Partnership agreement (see 42:1-1 et seq.)	\$50
(8) Recording Inheritance Tax Waiver	\$15
c. Commissions and oaths:	
(1) Administering oaths to notaries public and commissioners of deeds	\$15
(2) Issuing County Clerk's certificate	\$5
(3) Issuing certificate of the commission and qualification of notary public for filing with other county clerks	\$15
(4) Filing certificate of the commission and qualification of notary public with County Clerk of county other than where notary has qualified	\$15
d. Miscellaneous charges:	
(1) Copies of all papers, per page, by Clerk	\$2
(2) Copies, per page, self service	actual cost
(3) Certification any instrument	\$10
(Plus \$2 per page of instrument)	
(5) Processing returned check,	\$20 plus bank fee

Source: 22A:2-7; 22A:2-29; 22A:4-4.1.

COMMENT

The fee language from 22A:4-4.1 was consolidated. The fee language from Section 22A:2-29 was imported. In b., charges for comparing and making copies, typing and comparing photostats, and marking as a true copy were eliminated as obsolete. Parts of the former 22A:4-12 are included here.

A case recently decided by our Supreme Court, *Burnett v. County of Bergen*, --- N.J. ---, 2009 WL 1107899 (2009), acknowledged that there were aspect of the relevant law that favored the release of realty records without redaction of the Social Security numbers contained therein. The Court determined, however, that the records did not require SSNs and that the fact that SSNs may be available at the Clerk's office does not eliminate a person's expectation of privacy. The Court further determined that the relevant case law supported the redaction of SSNs from the realty records before provision of those records to the bulk requester, and that the cost of redaction of Social Security numbers could be imposed on the commercial bulk requester, which had sought eight million pages of records spanning 22 years. The Supreme Court specifically stated that the determination in *Burnett* was limited to "the unique facts" of that case. As a result, no language regarding the Court's decision has been included in the statute.

Old Subsection a.(2) was eliminated as outdated after preliminary discussions with County Clerk's Offices. Old Subsection a.(3) was modified since the charge for any marginal notation is \$10 and it was suggested that listing some of the kinds of marginal notations increased the potential for confusion. Subsection a.(3) was revised to more accurately reflect the costs associated with a lis pendens in a foreclosure action and to clarify that the costs associated with a foreclosure lis pendens differ from that filed in a non-foreclosure action (in which the standard recording fee is charged). Other subsections in a. were removed as unnecessary since they referred specifically to kinds of marginal notation or recording that were sufficiently addressed by the general language pertaining to recording and marginal notations. (See, old a.(6), (7), (9), (13) and (16) for example). In subsection a.(5) the reference to tax sale certificates was added to reflect the practice although no such provision currently exists in the law. The reference to additional volumes and pages in subsection a.(5) was added to cover situations in which multiple mortgages were recorded and then must be cancelled. Subsection a.(9) was changed back to the amount listed in the current statute. Subsection a.(13) was modified to reflect the fact that the County Clerk's Office does not issue a NUB, it files them and to update the change for a notation to match the charge for notations in all other circumstances. It was suggested that the provisions of old subsection a. (21) are obsolete and have been since the Construction Lien Law was enacted.

Old subsection b.(1) was eliminated as superfluous. Subsection b.(3) was changed to reflect the fact that the County Clerks do not exemplify documents, they certify them. And the per page fee was reinstated because, without it, an individual could obtain a certified document that was hundreds of pages long for the fee of \$10 even though the County Clerk's Office is required to provide the copies for certified documents. Subsections b.(3) and (5) were added to clarify fees currently charged.

Old subsection c.(1) was removed because it was suggested that since the County Clerks do not (except as otherwise stated) record documents that does not pertain to real property, a provision such as this one is confusing because it makes it appear as though the Clerk must record documents that individuals prepare relating to vehicles and other items/issues that do not involve not real property. Old subsections c.(9) through (18) were removed as apparently obsolete. The language of subsection c.(8) was streamlined.

The language in subsection d.(2) was revised as a result of preliminary discussions with representatives from County Clerk's offices. The language pertaining to self-service copies was revised to remove a charge of \$0.25 per page and replace it with the language "actual cost" to reflect the case law determinations made in the Law Division which determinations are presently pending on appeal. Further revision may be appropriate after this issue has been finally determined by the Court since there are conflicting decisions arising out of cases throughout the State. The miscellaneous charges were moved to the end of the section.

Modest changes to some of the fees have been made simply to make the charges multiples of \$5. Photocopying has been made \$1 per page throughout. The fees for marking true copies have been stricken as no longer commonly used. Some fees in this section were modified to make them more consistent with other fees in this and other sections of the statute. The changes are generally minor. Some limited language has been removed from this section based on the comments received from the County Clerks. Language calling for a fee of \$3 per day for the County Clerk to attend Court sessions was proposed for removal as no longer relevant. Reference to making copies and comparing them was removed, as was the fee of \$2 associated with that task. The fee associated with issuing a nonalcoholic beverage ID card was eliminated as it appears that these cards are no longer issued by the County Clerks.

22B:6-2. Fees payable to the municipal clerk for mechanic lien services

The following fees are payable to the Municipal clerk for mechanics lien services:

a. Filing, indexing and recording mechanic's lien claim	\$10
b. Recording, filing and noting on the record the discharge, release or satisfaction of a mechanic's lien claim	\$10
c. Extension of lien claim	\$5

d. Filing statement in mechanic's lien proceeding	\$10
e. Filing, recording and indexing mechanic's notice of intention	\$5
f. Filing a court order to discharge notice of intention and noting the discharge on the record	\$15
g. Filing, recording and indexing stop notice	\$5
h. Filing a certificate discharging a stop notice and noting the discharge on the record	\$5
i. Filing a court order discharging a stop notice and noting the discharge on the record	\$10
j. Filing a certificate discharging mechanic's notice of intention and noting the discharge on the record	\$5
k. Filing certificate from court of commencement of suit	\$5
l. Filing a court order amending a mechanic's notice of intention	\$10

Source: 22A:2-29.

COMMENT

Part of the fee language from Section 22A:2-29 was imported and included here since the County Clerks advised that they no longer record these documents.

Fees of Certain State Officers

22B:7-1. Fees of State Treasurer

The fees for the enumerated services by the State Treasurer are as follows:

a. Filing an original business certificate for which no other fee is fixed by statute or regulation, \$125.

b. Filing a change or amendment to a previously filed document for which no other fee is fixed by statute or regulation, \$75.

c. Issuing a certificate or filing any other document for which no other fee is fixed by statute or regulation, \$25. This subsection shall not apply to:

- (1) Certificates of appointments for gubernatorial appointees;
- (2) Documents filed by public bodies under the "Open Public Meetings Act," *N.J.S.* 10:4-6 et seq.;
- (3) Financial disclosures filed by State officials;
- (4) Oaths of office;
- (5) Resignation of office holders;
- (6) Documents filed by other State government entities indexed in the department's miscellaneous file.

d. Certifying or exemplifying a document on file, \$25.

e. Certifying or exemplifying a signature on file, including the issuance of a certificate for proving a document outside the United States, also known as an apostille, \$25.

f. Filing a certified copy of an order of change of name, \$50.

g. Producing a paper copy of any document on file, \$1 per page. If a roll of microfilm images is requested, the State Treasurer shall collect a fee of \$1 for each image on the microfilm roll. If a microfiche copy of a microfiche is requested, \$5.

h. Filing a proof of publication, \$10.

Source: 22A:4-1a.

COMMENT

This section remains largely unchanged, although the language of subsection e. was modified to make the fee for all apostilles the same. No further change of the substance is contemplated. Subsection a. was renumbered for ease of reference. 22A:4-2 was removed as no longer relevant. The number identifying the statutory source section was corrected in this report.

22B:7-2. Commissioner of Banking and Insurance

a. The fee payable to the Commissioner of Banking and Insurance is \$5 for accepting service of process as the attorney for:

(1) a foreign insurance company or association;

(2) a banking, saving, trust, guaranty, safe deposit, indemnity, mortgage, investment, or building and loan corporation or association organized under the laws of any other State or of any foreign government;

(3) a foreign fraternal beneficiary association;

(4) any person, co-partnership, association or corporation engaged in the business of making small loans; and

(5) a foreign building and loan association.

b. The plaintiff in an action shall be entitled to recover the amount of the service fee as part of the taxable costs if the plaintiff prevails in the action.

Source: 22A:4-3.

COMMENT

This section remains unchanged in substance but has been streamlined. Subsection lettering and numbering was added for ease of reference. If this section is still relevant, then it may be appropriate to update the fees.

Time of collection of fees

22B:8-1. Collection of fees in advance; deposits; accounts

a. Surrogates, registers of deeds and mortgages, county clerks, clerks of courts, sheriffs and the Secretary of State may exact in advance the fees and costs for any service provided.

b. For convenience, the officers listed above may receive reasonable deposits in advance to meet the fees and costs of persons who may desire such services, except that sheriffs and the Clerk of the Superior Court shall be required so to do. Such officers shall account to depositors at least once in 4 months for the sums deposited, except that the

Clerk of the Supreme Court, the Clerk of the Superior Court, sheriffs, and the Secretary of State shall so account at least annually.

c. The Secretary of State shall provide for the establishment of accounts for persons making application therefor, under such terms and conditions as may be fixed by the Secretary of State.

d. Whenever any surrogate, register of deeds and mortgages, county clerk or sheriff shall be requested by the State or any of its agencies to file, enter and docket, record, make a copy, search or perform any other service in their respective offices for which costs, fees or compensation is allowed, such officer shall perform the service requested without exacting payment in advance of the lawful fees but such officer shall render to the State, or the agency thereof making such request, a monthly statement of all such fees due and payable. No officer shall become personally liable to his or her county for the payment of such fees and costs until they shall have been actually paid to the officer.

e. The Secretary of State is authorized to establish reasonable fees for the specialized research, reference, and reproduction services provided by the State Archives, Division of Archives and Records Management in the Department of State, involving permanent historical documents in any format or medium. Such fees shall be established pursuant to the provisions of the Administrative Procedure Act, and shall reflect the actual costs of the services, including labor and overhead. All fees collected by the State Archives for such services shall be paid into the existing nonlapsing "Archives User Fees Account" administered by the Division of Archives and Records Management.

Source: 22A:4-19; 22A:4-20; 22A:4-21.

COMMENT

This section consolidates three former sections; all remain substantially unchanged, and no change of the substance is contemplated. Subsection lettering was added for ease of reference. Comments by Sheriff's officers requested a modification in subsection b. to reflect that they are required to account to depositors only upon the depositor's request.

Responsibility for Fees Collected

22B:9-1. Accounting for fees by Clerk of Supreme Court and Clerk of Superior Court

a. Except as otherwise provided by statute, fees, costs, allowances, percentages and other perquisites which the Clerk of the Supreme Court, the Clerk of the Superior Court, and their office assistants are allowed by law to charge and receive for official acts or services they may render, shall be for the sole use of the State as public money, to be regularly accounted for and paid over as hereinafter set forth.

b. The Clerk of the Supreme Court and the Clerk of the Superior Court shall render a full and itemized statement of account and return to the Director of the Division of Budget and Accounting of all such sums received by them or their assistants and of all sums which may have been charged or taxed, or which may have accrued or become payable for services during the month preceding the making of such statement. The

statement of account shall be made under oath in such form as the Director shall specify, and shall be filed in his office to be audited by him and kept as a public record.

c. All such fees, costs, allowances, percentages and other perquisites shall be paid to the State Treasurer on or before the tenth day of each month, and whether collected or not, such officers shall be personally liable for the payment.

d. The penalty for each day's neglect of any such officer in rendering his account or in paying over such money to the State Treasurer shall be \$100, to be recovered in the name of the State in a civil action in the Superior Court, in the proceeding in lieu of prerogative writ against the clerks.

Source: 22A:4-15.

COMMENT

This section remains substantially unchanged. The language requiring that action be taken on the 10th of the month was suggested to be a holdover from the days before electronic transfers of funds and was eliminated on that basis. No change of the substance is contemplated. Subsections were numbered for ease of reference.

22B:9-2. Disposition of fees of county officers

a. All fees, costs, allowances, percentages and other perquisites of whatever kind which surrogates, county clerks in their several capacities, registers of deeds and mortgages, and sheriffs or persons employed in their offices are entitled to charge and receive for any official acts or services they may render shall be for the sole use of the county and shall be accounted for regularly to the county treasurer; however, such monies shall be utilized to increase the salaries of surrogates, county clerks, registers of deeds and mortgages and sheriffs, except as provided in 22A:4-8.1, 22A:4-17.1 and 22A:4-17.2.

b. Such accounting shall be made on or before the fifteenth day of each month on form blanks supplied by the county treasurer. The statement of account shall clearly set forth all sums charged or taxed or which shall have accrued or become payable during the preceding month. Such statements shall be made under oath and filed in the office of the county treasurer as public records.

c. Such statements when received by the county treasurer shall be forthwith audited by the county auditor or other proper officer.

d. On or before the twentieth day of each month surrogates, county clerks, registers of deeds and mortgages, and sheriffs shall pay over the amount of such fees and moneys to the county treasurer and such officers shall be personally liable to the county for such fees and moneys.

e. The penalty for each day's neglect to file the required statement of account or to pay over such moneys shall be \$100 to be recovered in the name of the board of chosen freeholders of the county in a civil action in the Superior Court, and said officers may also be proceeded against by proceeding in lieu of prerogative writ.

f. (1) In addition to the fees authorized in *N.J.S.* 22A:4-4.1, and except as provided in paragraph (2) of this subsection, upon resolution or ordinance of the county governing body, as appropriate, a surcharge of three dollars shall be

charged for each document recorded, which will be in addition to any other charge allowed by law. The county treasurer shall deposit the surcharges so collected into a fund that shall be used by the county to accomplish the purposes of *N.J.S. 52:27D-287a et al.* This fund shall be known as the "Homelessness Housing Trust Fund." Five percent of the fund may be used annually by the county for administrative costs related to administration of the fund and the grant program established pursuant to *N.J.S. 52:27D-287a et al.*, and the remainder only for homelessness housing programs as described in *N.J.S. 52:27D-287a et al.*

(2) The surcharge imposed in this section does not apply to assignments or ~~substitutions~~ of previously recorded ~~deeds of trust~~ mortgages.

Source: 22A:4-17.

COMMENT

This section remains substantially unchanged, and no change of the substance is contemplated. Subsections were numbered for ease of reference.

The language was modified after the issuance of a Final Report to include subsection f., which reflects a change in the law enacted in September 2009 and makes a correction to that section. A commenter suggested that the words "substitutions" and "deeds of trust" were likely included in New Jersey's current statute as a result of an oversight on the part of the Legislature since New Jersey does not have deeds of trust. This was confirmed by the County Clerks, who also indicated that including the term "substitutions" was unnecessarily confusing. As a result, the language was modified as shown with underlining and strikeout as shown above.

22B:9-3. County treasurer responsible for certain fees received by or deposited with the county sheriff

a. The county treasurer shall be responsible for all fees received by or deposited with the county sheriff pursuant to 22A:4-8. The county sheriff shall account to the county treasurer for all these fees.

b. The county treasurer shall deposit into a trust fund dedicated to the sheriff's office \$2 of each fee over the amount of \$3 received for a service enumerated in 22A:4-8. Such sums shall be deposited within 10 days of receipt by the county treasurer. Monies in the trust fund shall be used to upgrade and modernize the services provided by their offices. As used in this section, "to upgrade and modernize the services" shall not include the costs associated with employing personnel and shall not include offset of existing salary or new positions. The monies in the trust fund shall not be used for budgetary reduction by the counties.

c. Notwithstanding any provision of law to the contrary, monies received by a county sheriff attributable solely to the amount of fee increases for services enumerated in 22A:4-8 pursuant to the amendments set forth in section 5 of P.L.2001, c.370, that exceed in any year the amount by which the annual minimum salary of the sheriff, fixed pursuant to 40A:9-104, exceeds the amount of the county sheriff's salary in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

Source: 22A:4-8.1.

COMMENT

This section remains unchanged, and no change of the substance is contemplated. The number identifying the statutory source section was corrected in this report.

22B:9-4. Return of portion of fees to surrogate, county clerk, or register of deeds and mortgages; use

a. The county treasurer shall return to the county clerk or the register of deeds and mortgages \$2 of each fee received for the recording, filing or canceling of a document in the office of the county clerk or register of deeds and mortgages. Such sums shall be returned within 10 days of receipt of the fee by the county treasurer.

b. Monies received by the county clerks or registers of deeds and mortgages pursuant to the provisions of subsection a. shall be used to upgrade and modernize the services provided by their offices.

c. The provisions of subsection a. shall not apply to fees received from municipalities for recording, filing or canceling documents.

d. Notwithstanding any provision of law to the contrary, monies received by a county clerk attributable solely to the amount of fee increases for services enumerated in 22A:2-29 pursuant to the amendments set forth in section 2 of P.L.2001, c.370 and enumerated in 22A:4-4.1 pursuant to the amendments set forth in section 4 of P.L.2001, c.370, that exceed in any year the amount by which the annual minimum salary of the county clerk fixed pursuant to 40A:9-76 exceeds the amount of the county clerk's salary in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

e. Notwithstanding any provision of law to the contrary, monies received by a register of deeds and mortgages attributable solely to the amount of fee increases for services enumerated in 22A:4- 4.1 pursuant to the amendments set forth in section 4 of P.L.2001, c. 370 that exceed in any year the amount by which the annual minimum salary of the register of deeds and mortgages fixed pursuant to 40A:9-92 exceeds the amount of the salary of the register of deeds and mortgages in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

f. The county treasurer shall return to the county surrogate \$2 of each fee received for the probate of a will; for the grant of general administration; for the grant of letters of guardianship; for the grant of letters of trusteeship for the filing of inventories; for the filing of accountings; and for any other proceeding filed, recorded or issued in the surrogate's court. Such sums shall be returned within 10 days of receipt by the county treasurer.

g. Monies received by the county surrogates pursuant to the provisions of subsection f. of this section shall be used to upgrade and modernize the services provided by their offices. These monies shall not be used for budgetary reduction by the counties.

h. Notwithstanding any provision of law to the contrary, monies received by a county surrogate attributable solely to the amount of fee increases for services enumerated in 22A:2-30 pursuant to the amendments set forth in 22A:2-30, that exceed in

any year the amount by which the annual minimum salary of the surrogate fixed pursuant to 2B:14-3 exceeds the amount of the surrogate's salary in effect on November 1, 2000, shall be used for budgetary reduction by the county and shall be reflected as a county tax levy reduction.

Source: 22A:4-17.1; 22A:4-17.2.

COMMENT

This section remains substantially unchanged, and no change of the substance is presently contemplated. The language of subsection g. was changed in response to an error noted by COANJ.

Revenue

22B:10-1. Increased fees under P.L.1996, c.52, use; fund

a. An amount equal to 95% of the increase in fees collected pursuant to the provisions of 22A:2-51 shall be annually appropriated to the Department of Community Affairs for the provision to the poor of legal assistance in civil matters by Legal Services of New Jersey and to the Judiciary to fund 10 Superior Court judgeships, to supplement funds appropriated from other sources in a fiscal year for these purposes. An appropriation pursuant to this section shall not be used to replace appropriations from any other source for these purposes.

b. An amount equal to 5% of the increase in fees collected pursuant to the provisions of 22A:2-51 shall be annually appropriated to the Department of State, Higher Educational Services, to be allocated equally among Rutgers-Newark Law School, Rutgers-Camden Law School and Seton Hall Law School for clinical programs which provide free legal representation to the poor, to supplement funds appropriated from other sources in a fiscal year for these purposes. An appropriation pursuant to this section shall not be used to replace appropriations from any other source for these purposes.

c. A non-lapsing, revolving fund is created in the State Department of the Treasury, into which the Treasurer shall deposit annually an amount equal to the revenue derived from the increase in the fees collected pursuant to 22A:2-51. Interest and other income earned on moneys deposited into this fund shall be credited to the fund. Moneys in the fund shall be appropriated and distributed annually exclusively for the purposes set forth in subsections (a) and (b). The State Treasurer shall have performed an audit of this fund biennially following the effective date of 22A:2-51 and the results of the audit shall be included in the report required pursuant to subsection (d).

d. The State Treasurer shall submit annual report to the Legislature on the use of the fees collected pursuant to 22A:2-51 and deposited into the fund created pursuant to subsection (c). The report shall be submitted to the President of the Senate and Speaker of the General Assembly, and the Senate Budget and Appropriations Committee, Assembly Appropriations Committee, Senate Judiciary Committee, and Assembly Judiciary Committee or their successors.

Source: 22A:2-51.

COMMENT

This section remains substantially unchanged, and no change of the substance is contemplated.

22B:10-2. Dedicated check off fee revenues for upgrading and modernizing services, capital plan.

With regard to all increased check off fee charges, the revenues from which are dedicated to upgrading and modernizing the services provided by the offices of constitutional officers, pursuant to the provisions of 22A:4-8.1 or any other provision of law:

a. Each constitutional officer shall prepare and submit to the board of chosen freeholders, for its approval, a five-year capital plan setting forth the capital purposes to which the check off fee revenues are to be applied. These purposes shall include improving recording and election system when applicable;

b. Any dispute concerning the use of the check off fee revenues shall be submitted to and resolved by the assignment judge of the county, who shall be the final arbiter of such disputes;

c. Check off fee revenues shall not be used for budgetary reduction by the county and the Director of the Division of Local Government Services in the Department of Community Affairs shall require the amendment of any county budget that is not in compliance with the requirements of this subsection;

d. Interest earned on check off fee revenues held in a dedicated or trust account shall accrue to that account and shall be used only for the purposes of check off fee revenues.

Source: 22A:2-51.1.

COMMENT

This section remains substantially unchanged, and no change of the substance is contemplated.

22B:10-3. New Jersey Public Records Preservation Account

a. The "New Jersey Public Records Preservation Account," a dedicated account within the Department of the Treasury, is established. Notwithstanding any other provision of law to the contrary, monies received by a county clerk attributable solely to the amount of increases to the fees imposed pursuant to 22A:4-4 shall be paid by the county clerk to the Treasurer for deposit in the New Jersey Public Records Preservation Account, \$2 of which shall be allocated for grants to counties and municipalities for the management, storage and preservation of public records and \$3 of which shall be allocated to the Division of Archives and Records Management within the Department of State for the management, storage and preservation of public records.

b. The State Division of Archives and Records, in consultation with the State Records Committee, may, pursuant to the provisions of the Administrative Procedures Act, make, adopt, amend, or repeal such rules and regulations as the Division finds necessary to carry out the provisions of this section.

Source: 22A:4-4.2.

COMMENT

This section remains substantially unchanged, and no change of the substance is contemplated. 22A:4-4 was repealed in 1965 and replaced by 22A:4-4.1. The AOC has suggested that allocating \$2 of the

funds to the AOC for the management, storage and preservation of public records would be appropriate and useful.