Conference Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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Second Regular Session
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CHAPTER 280

SENATE BILL 1180

AN ACT

AMENDING SECTIONS 11-445 AND 22-136, ARIZONA REVISED STATUTES; RELATING TO CONSTABLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-445, Arizona Revised Statutes, is amended to read:

11-445. Fees chargeable in civil actions by sheriffs, constables and private process servers; authority of private process servers; background investigation; constables' logs

A. The sheriff shall receive the following fees in civil actions:

1. FOR serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.

2. FOR summoning each witness, sixteen dollars.

3. FOR levying and returning each writ of attachment or claim and delivery, forty-eight dollars.

4. FOR taking and approving each bond and returning it to the proper court when necessary, twelve dollars.

5. FOR endorsing the forfeiture of any bond required to be endorsed by him, twelve dollars.

6. FOR levying each execution, twenty-four dollars.

7. FOR returning each execution, sixteen dollars.

8. FOR executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy OR CONSTABLE for the actual time spent in excess of three hours.

9. FOR posting the advertisement for sale under execution, or any order of sale, twelve dollars.

10. FOR posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars EXCEPT THAT POSTING FOR A WRIT OF RESTITUTION SHALL NOT EXCEED TEN DOLLARS.

11. FOR executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.

12. FOR executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.

13. For services in designating a homestead or other exempt property, twelve dollars.

14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.

15. FOR serving and returning each writ of garnishment and related papers, forty dollars.

16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.

17. FOR EVERY WRIT SERVED ON BEHALF OF A JUSTICE OF THE PEACE, A FEE ESTABLISHED BY THE BOARD OF SUPERVISORS NOT TO EXCEED FIVE DOLLARS PER WRIT SHALL BE ESTABLISHED. MONIES COLLECTED FROM THE WRIT FEES SHALL BE DEPOSITED IN THE CONSTABLE ETHICS COMMITTEE FUND ESTABLISHED BY SECTION 22-136.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.

2. A REASONABLE FEE FOR EXECUTING A CIVIL ARREST WARRANT ORDERED PURSUANT TO COURT RULE BY A JUDGE OR JUSTICE OF THE PEACE. THE FEE SHALL ONLY BE CHARGED TO THE PARTY REQUESTING THE ISSUANCE OF THE CIVIL ARREST WARRANT.

~~2.~~ 3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but, in any event, not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services upon process issued from the superior court.

G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

~~H.~~ Private process servers duly appointed or registered pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers required or permitted by law to be served prior to,

during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court. As a condition of registration, the supreme court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant's criminal history record information. The cost shall not exceed the actual cost of obtaining the applicant's criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety is authorized to exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check. A private process server may charge such fees for services as may be agreed upon between the process server and the party engaging the process server.

I. Constables shall maintain a log of work related activities including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

J. The log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. Copies of the log shall be filed monthly with the clerk of the justice court and with the clerk of the board of supervisors.

Sec. 2. Section 22-136, Arizona Revised Statutes, is amended to read:

22-136. Constable ethics committee

A. A constable ethics committee is established consisting of the following voting members:

1. Two constables from counties with a population of less than one million persons who are appointed by the Arizona association of counties.

2. Two constables from counties with a population of one million or more persons who are appointed by the Arizona association of counties.

~~3. One superior court judge who is appointed by the chief justice of the supreme court.~~

~~4.~~ 3. One justice of the peace who is appointed by the chief justice of the supreme court.

~~5.~~ 4. One county administrator OR DESIGNEE who is appointed by the county supervisors association.

~~6.~~ 5. One sheriff who is appointed by the governor.

~~7.~~ 6. One member of the public who is appointed by the governor.

7. ONE BOARD MEMBER OF THE ARIZONA MULTIHOUSING ASSOCIATION WHO IS APPOINTED BY THE GOVERNOR.

B. ~~The chairperson of the Arizona commission on judicial conduct or the chairperson's designee who is also a member of the commission is the chairperson of the committee. The chairperson of the committee is a nonvoting advisory member.~~ THE COMMITTEE SHALL ANNUALLY ELECT A CHAIRPERSON FROM AMONG ITS MEMBERS. The committee shall adopt a constable code of conduct that addresses attendance at mandatory training and rules of procedure ~~and shall receive administrative support from the Arizona commission on judicial conduct~~.

C. Terms of the committee members are four years, except that the initial terms of two constables, ~~the superior court judge,~~ the county administrator and the sheriff are two years. If a member ceases to hold the position that qualified the member for the appointment, the member's membership terminates and the appointing authority pursuant to subsection A OF THIS SECTION fills the vacancy for the unexpired term.

D. The committee shall hear and investigate written complaints from any person involving a constable's ethical or personal conduct. The committee shall attempt to remedy a constable's inappropriate behavior by:

1. Mediating.

2. Issuing warnings, reprimands or admonishments.

3. Instructing constables to take particular action to correct behavior or to take educational courses.

4. Urging a constable to retire from office.

E. If the committee is not satisfied with the remedies prescribed by subsection D OF THIS SECTION the committee shall submit a report to the county attorney's office in the county in which the conduct at issue occurred.

F. A CONSTABLE ETHICS COMMITTEE FUND IS ESTABLISHED CONSISTING OF MONIES RECEIVED FROM WRIT FEES COLLECTED PURSUANT TO SECTION 11-445, SUBSECTION A, PARAGRAPH 17. THE CONSTABLE ETHICS COMMITTEE SHALL ADMINISTER THE FUND SUBJECT TO LEGISLATIVE APPROPRIATION. ON NOTICE FROM THE COMMITTEE, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED IN SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. THE FUND IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. THE COMMITTEE SHALL USE:

1. EIGHTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR CONSTABLE TRAINING, EQUIPMENT AND RELATED GRANTS.

2. TWENTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR OPERATING EXPENSES OF THE COMMITTEE.

Sec. 3. Short title

This act may be cited as the "Marilyn Jarrett Constable Ethics Act".

APPROVED BY THE GOVERNOR MAY 16, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 16, 2006.