



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Director of State Courts Office
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Dear Sir or Madam:

¶ 1. Former Director of State Courts A. John Voelker asked if the clerk of circuit court or the register in probate may properly charge a statutory fee for copies of court documents when the requester makes copies using his or her own technology, such as a camera phone or handheld scanner. The question implicates Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1., which direct the clerk of court and register in probate to collect \$1.25 and \$1.00, respectively, for “copies.” The question also implicates the public-records law, which permits authorities such as the courts to charge only “the actual, necessary and direct cost of reproduction” unless a different fee is “specifically established” in the statutes. Wis. Stat. § 19.35(3)(a).

¶ 2. I conclude that the term “copies” in Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. includes the use of technologies such as a camera phone or handheld scanner. The statutes, however, do not authorize the collection of fees when a requester makes the copies using those devices with no aid from the clerk or register. The court clerk and register are the authorities holding the records. These officials thus control the method of copying and may choose whether to allow a person to make copies with a personal device.

¶ 3. The first issue is the scope of the term “copies” in Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. Interpretation of a statute begins with the statutory language and its “ordinary” meaning. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. “[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶ 46. The clerk-of-court statute orders a clerk to collect fees for “copies”:

In a civil action, the clerk of court shall collect the fees provided in this section. . . . *The clerk shall collect the following fees:*

. . . .

(10) COPIES. (a) Except as provided in par. (b), *for copies*, certified or otherwise, of any document for which a specific fee is not established by this section, or for comparison and attestation of copies not provided by the clerk, *\$1.25 per page*.

(b) For copies of any court document requested by the state public defender, other than a transcript, a fee equal to the actual, necessary and direct costs of copying.

Wis. Stat. § 814.61(10). The register-in-probate statute contains the same language, albeit with a smaller fee: “The register in probate shall collect the following fees: . . . for copies . . . \$1 per page.” Wis. Stat. § 814.66(1).

¶ 4. The ordinary meaning of the word “copies” is broad. Dictionaries state that a “copy” is defined by its similarity to the original, not by the technology with which it was created. For example, the dictionary definition of “copy” has long been “an imitation, transcript, or reproduction of an original work.” *Webster’s Third New International Dictionary* 504 (1986). Similarly, the contemporary online dictionary definition states that a “copy” is “something that is or looks exactly or almost exactly like something else: a version of something that is identical or almost identical to the original.”¹ Black’s Law Dictionary defines “copy” as “[a]n imitation or reproduction of an original.” *Black’s Law Dictionary* 385 (9th ed. 2009). A camera-phone image of a document (assuming it was competently captured) looks “almost exactly like” the original document.

¶ 5. In other contexts, the legislature has demonstrated that it understands “copy” to have a meaning broader than “photocopy.” In 2013 Wis. Act 171, the legislature substituted the word “copy” for “photocopy” in a public-records-law provision, Wis. Stat. § 19.35(1)(b), in an effort to broaden its meaning:

Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record. If a requester

¹Merriam-Webster, <http://www.merriam-webster.com/dictionary/copy> (last visited September 24, 2014).

appears personally to request a copy of a record that permits ~~photocopying~~ copying, the authority having custody of the record may, at its option, permit the requester to ~~photocopy~~ copy the record or provide the requester with a copy substantially as readable as the original.

2013 Wis. Act 171, § 10 (revising Wis. Stat. § 19.35(1)(b)). A note to the Assembly Bill explained the change: “*Broadens application of the right to photocopy or receive a photocopy of a record to apply to other forms of copying.*” 2013 Assembly Bill 567, § 10 (Wis. 2014), Note (emphasis added). Thus, the legislature understands the word “copy” to be broader than “photocopy,” and to include other “forms” of reproduction.

¶ 6. Courts also endorse that ordinary meaning. For example, in the public-records context, the Wisconsin Court of Appeals has described the act of taking digital photographs of a court document as “to copy.” *Grebner v. Schiebel*, 2001 WI App 17, ¶¶ 6, 9, 14, 240 Wis. 2d 551, 624 N.W.2d 892; *see also United States v. Hampton*, 464 F.3d 687, 690 (7th Cir. 2006) (discussing “a photocopy (or equivalent chemical or electronic copy)”).

¶ 7. In sum, dictionary definitions, the use of the term in other statutes, and court decisions all treat the word “copies” as including the electronic capturing of a document with technologies such as a handheld scanner or camera phone.²

¶ 8. The second question is whether the statutes contemplate a fee when the copy is not made with the assistance of the clerk or register, but rather is accomplished by an individual with his or her personal device. While Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. include the term “copies” as items for which the clerk or register, respectively, may charge fees, the statutes are silent as to what action, if any, the clerk or register must take to charge the copy fees. Notably, the statutes list other types of fees, and all of them involve services that implicitly require some action by the clerk or register. The other clerk fees listed in Wis. Stat. § 814.61 involve opening a case, filing something in the court record, transferring files to another court, issuing something (such as a certificate), or administering a process (such as

²The public-records law does contain one subsection that seems to differentiate between a “copy” and a “photograph,” but that subsection does not have general application. It applies only in the rarer circumstance where the record is something that “does not permit copying.” Wis. Stat. § 19.35(1)(f). For the reasons discussed above, I conclude that when it comes to documents amenable to copying there is no line to be drawn between a photocopy and digital capturing of that document via a handheld scanner or camera phone.

calling a jury). *See* Wis. Stat. § 814.61(1)-(14) (addressing commencement of actions, including petitions for revisions, judicial review, and support and maintenance; requests for change of venue; filing of third-party complaint; jury; issuing “executions, certificates, [etc.]” and filing and entering judgments; filing foreign judgments; transmitting documents; searching for files when no case number provided; receiving/dispersing money). All of these subsections require an action that the clerk exclusively performs, but none expressly state that the clerk is the official taking the action. The same pattern is found in the register in probate statute. Wis. Stat. § 814.66(1)(a)-(n).

¶ 9. When an individual makes a copy using his or her own personal technology, no action by the clerk or register is required. A person may request that a clerk retrieve a file for inspection, and may then examine that file on the premises.³ While inspecting, if that person decides to copy a page using a camera phone or handheld scanner, it would require no additional action by the clerk in making copies, maintaining copying equipment, or otherwise aiding the requester. Statutory language is interpreted consistent with the language of closely-related statutes and to avoid absurd or unreasonable results. *See State ex rel. Kalal*, 271 Wis. 2d 633, ¶ 46. Charging a fee when the clerk or register does nothing to make a reproduction is inconsistent with the other items on the list. Indeed, were the statute to be interpreted otherwise, then the clerk of courts could charge an individual for a copy made from the first copy, even if done away from the clerk’s office.

¶ 10. This interpretation is consistent with other similarly-structured fee statutes in Wisconsin. For example, Wis. Stat. § 165.82 provides for a criminal history search fee. It states that the Wisconsin Department of Justice “shall impose the following fees” and then provides: “For each record check . . . \$7.” Wis. Stat. § 165.82(1)(am). In a similar manner, Wis. Stat. § 814.70(1) provides that sheriffs “shall collect” certain fees and then states: “For each service or attempted service of a summons . . . \$12 for each defendant or person.” Like the clerk and register fee provisions, these provisions specify who collects the fee and then provide the fee amount without further reference to an actor. The reasonable reading of these provisions is that the fees apply only when the Department of Justice performs the criminal history check or when the sheriff’s office achieves or attempts service, as opposed to some other entity or person taking these actions. Otherwise, the statutes

³The statute would impose a separate fee for searching “when the person requesting the search does not furnish the case number of the action,” which is not at issue in this opinion. *See* Wis. Stat. § 814.61(11).

would lead to the absurd result of, for example, paying a fee to the Department of Justice for a background check performed by a private company. This reasoning applies with equal force to the clerk and register fee provisions.

¶ 11. Indeed, a New Jersey appellate court came to that conclusion when addressing New Jersey's similar fee provision for copies from a clerk. In *Dugan v. Camden County Clerk's Office*, 870 A.2d 624, 626 (N.J. Super. Ct. App. Div. 2005), the court addressed a New Jersey statute that authorized the clerk to charge a fee for: "Copies of all papers . . . \$2.00." As with the relevant Wisconsin laws, the court explained that New Jersey's fee provision was listed together with other items that required the clerk to provide a service. *Id.* The court concluded that, consistent with those other provisions and with the "language itself" suggesting "the performance of an active service," the copy fee applied only "if the clerk physically makes the copy." *Id.* at 627-28.

¶ 12. Thus, Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. do not include fees for copies made without assistance from a clerk or register.

¶ 13. The public-records law allows a separate fee for a record only when that fee is "specifically established." Wis. Stat. § 19.35(3)(a). Because Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. are silent as to whether fees apply to copies made by others, those provisions do not "specifically establish" fees for such copies within the meaning of Wis. Stat. § 19.35(3)(a). I conclude that the fee provisions do not apply to copies made by a private person with his or her own technology, such as a handheld scanner or camera phone.⁴

¶ 14. While the custodian of court records may not charge an individual for using a cell phone camera to capture a copy of a court document, the custodian of court records may choose the method of copying and need not allow individuals to make their own copies. In *Grebner*, a requester sought to make copies at a county clerk's office with his own portable copy machine. 240 Wis. 2d 551, ¶ 1. The county clerk refused and offered to instead have her office make the copies for a fee. *Id.* ¶ 4. The clerk also would have permitted the requester to make the copies himself with a digital camera as long as it would not damage the documents. *Id.* ¶ 6. The court of appeals concluded that the requester needed the clerk's permission to use his own equipment to copy records. *Id.* ¶ 9. Interpreting Wis. Stat. § 19.35(1)(b), the court held

⁴This opinion addresses only the situation where the clerk or register is in no way involved in producing a copy. There may be situations where a clerk or register might aid a requester when that person makes copies using technology such as a handheld scanner or camera phone. Potential variations along those lines are not addressed in this opinion.

that the public-records law “gives *the clerk* the option of allowing the requester to copy the records with the requester’s own equipment or providing the requester with a copy of the records.” *Id.* ¶ 7 (emphasis added); *see also id.* ¶¶ 12-13 (further explaining that the law “does not require the custodian to articulate or explain the reasons for his or her decision”).

¶ 15. Accordingly, the custodian of court records may choose whether to allow someone to make his or her own copies with personal technology. If the decision is to allow a person to perform that copying unassisted, then the fees in Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. do not apply.

¶ 16. In sum, I conclude the term “copies” in Wis. Stat. §§ 814.61(10)(a) and 814.66(1)(h)1. includes copies made with the use of technologies such as a camera phone or handheld scanner. Those statutes, however, do not authorize fees for copies made by a requester using a personal device with no assistance from the clerk or register. The court clerk and the register may choose whether to allow an individual to make copies in this manner.

Sincerely,

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