

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030384

1. REQUESTED MOTION:

ACTION REQUESTED: Conduct a Public Hearing and consider the adoption of an Ordinance repealing Lee County Ordinance 74-4, and adopt a Resolution approving certain amendment to Lee County Administrative Code.

WHY ACTION IS NECESSARY: Board must formally adopt an Ordinance at a scheduled, advertised Public Hearing. Amends, by Resolution, AC 3-10 External Fees Number 6-1*.

WHAT ACTION ACCOMPLISHES: Will repeal Lee County Ordinance 74-4 providing for consistency and updateness and amends the Administrative Code and removes External Fee Number 6-1*.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # 5:00 #3

3. MEETING DATE:

05-22-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: _____

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT County Attorney
- C. DIVISION General Services
- BY: [Signature]
Kristie L. Kroslack
Assistant County Attorney

7. BACKGROUND:

On January 16, 1974, the Board of County Commissioners (BOCC) enacted Lee County Ordinance No. 74-4 providing for the assessment of a One Dollar (\$1.00) service charge on civil actions for the benefit of the office of the Official Court Reporter.

In 1995, the legislature abolished the office of the Official Court Reporter, making the collection of the service charge unnecessary.

ATTACHMENTS: Memorandum of Law/Court Service Charges
Proposed Repealing Ordinance
Resolution
Financial & Administrative Impact Statement
Notice Of Intent To Enact A County Ordinance

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	[Signature]	OA	OM	RISK	GC	[Signature]
					RK 4/1	4/2/03	3/21/03	4/2/03	4-3-03

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

RECEIVED BY
COUNTY ADMIN. RK
4-1-03
3:45
COUNTY ADMIN.
FORWARDED TO: DS
4/3 10:00

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: March 3, 2003

To: David Owen
Chief Assistant County Attorney

FROM: 
Kristie Kroslack
Assistant County Attorney

RE: Court Service Charges

Per your request, I have reviewed the letter dated February 17, 2003 from Steve Carta, legal counsel to the Clerk. In his letter, Mr. Carta raises the following issues, which I have summarized below.

- (1) Whether Lee Co. Ord. 74-4 which imposes a dollar (\$1.00) fee, as court costs, upon every civil case for the benefit of the Official Court Reporter, should be repealed?
- (2) Whether the three dollar (\$3.00) service charge contained in Lee Co. Ord. 81-87 which maintains the law library should be changed?
- (3) Whether the service charges contained in Lee Co. Ord. 81-28, as amended by Lee Co. Ord. 96-10, which partially funds Florida Rural Legal Services and Lee Legal Aid, should be changed to reflect the categorizing of service charges as contained in Fla. Stat. § 34.0541, 28.241 and 28.2401?
- (4) Whether Florida Rural Legal Services constitutes a legal aid program?

It should be noted at the onset that Lee County Ordinances 81-28, 81-27 and 96-10 need clarification and/or updating for purposes of establishing an appropriate service fee (in addition to that imposed by statute).

(1) In his letter, Mr. Carta inquires as to whether Lee Co. Ord. 74-4, which charges a dollar (\$1.00) to each party instituting a civil suit in order to pay for the services rendered by the official court reporter, should be repealed. The answer is "yes." The Office of the Official Court Reporter was abolished in 1995 by Chapter 95-286, § 6, Laws of Florida and the County's duty to pay the official court reporters ended. See, Friedman v. Date County, 762 So.2d 587 (Fla. 3rd DCA 2000). Court reporters should be funded with state general revenue funds. Fla. Stat. § 27.006(1). However, in criminal cases, the counties supplement such reporters, as necessary. Fla. Stat. § 27.006(2).

Re: Court Service Charges

(2) With regard to the second issue raised by Mr. Carta, whether the three dollar (\$3.00) service charge contained in Lee County Ordinance 81-87, which benefits the law library, should be amended or repealed due to lack of clarity or out datedness. Lee Co. Ord. 81-87 has not been amended since enactment. Presently, the ordinance imposes a three dollar (\$3.00) fee on county civil claim actions exceeding \$1,500.00 and six dollars (\$6.00) on circuit/probate actions. The intent of this 1981 ordinance was that the fee applied to county civil cases only and not small claims.

Presently, under Fla. Stat. § 34.041, service charges for county court small claims fees are categorized by amount:

- (1) Less than \$100
- (2) \$100 to \$2,500
- (3) More than \$2,500
- (4) Garnishment/Replevin
- (5) Tenant Action

The County may impose a service charge for maintenance of the law library on county civil and small claim actions. Fla. Stat. § 34.041(e). Additionally, civil circuit court and probate matters are also categorized by amount and type of action. See, Fla. Stat. § 28.241 and § 28.2401. Both statutory provisions allow the county to impose a service charge, by ordinance, to provide for a law library.

Accordingly, the ordinance can be amended to allow the county to impose a charge to maintain the library based upon the type of claim, i.e., (county court small claims, circuit court, probate, landlord/tenant, etc.). For example, the ordinance can provide that ". . . the Clerk is hereby authorized and directed to collect an additional fee or service charge in the amount of \$3.00 for claims less than \$100.00; \$6.00 for claims greater than \$100.00 but less than \$2,500.00; and \$9.00 for claims greater than \$2,500.00, etc. to maintain the law library."

(3) & (4) With regard to issues (3) and (4), Lee County may impose a service charge on county court civil actions and circuit court actions to be used for a legal aid program, pursuant to Fla. Stat. § 34.041(e) and 28.241(1). Also see, Section 125.01, Florida Statutes. Presently, Lee Co. Ord. 81-28, as amended by 96-10, provides for a service charge to be collected to partially fund Florida Rural Legal Services and Lee Legal Aid due to the rising cost of providing legal services to the poor and indigent. Such costs have continued to rise since 1996 as Lee County continues to grow. The adequacy of the service charge should be reviewed based upon such considerations.

With regard to 96-10, Mr. Carta inquired as to whether Florida Rural Legal Services (FRLS) is considered a legal aid program. While there is no statutory definition for "legal aid program," FRLS, a federally funded agency, which provides legal services or legal assistance to the general low income population and migrant farm-worker would likely qualify.

David Owen
March 3, 2003
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Re: Court Service Charges

In conclusion, I would recommend amending Lee Co. Ord. 81-28, 81-27 and 96-10 and enacting new ordinances which impose service charges to maintain the library and fund a legal aid program based upon the specific type of claim filed. The service charges imposed should be based upon the present data, such as community growth and the needs of the library and of legal aid. Also, Lee Co. Ord. 74-4 should be repealed as it is obsolete.

A meeting with staff from the clerk's office, legal aid and the law library is recommended.

KLK/kab

cc: James G. Yaeger, County Attorney
Robert W. Gray, Deputy County Attorney
Steve Carla
Sandi Sauls, Clerk's Office

LEE COUNTY ORDINANCE NO. _____

**A REVISER'S ORDINANCE REPEALING LEE COUNTY
ORDINANCE 74-4, PROVIDING FOR FINDINGS, INTENT,
CODIFICATION AND SCRIVENER'S ERRORS AND
EFFECTIVE DATE.**

WHEREAS, Lee County Ordinance 74-4, adopted on January 16, 1974, is obsolete, after the legislature abolished the office of the Official Court Reporter in 1995 (Chapter 95-286 Section 6, Laws of Florida); and

WHEREAS, the Board of Lee County Commissioners directed that Ordinances not needed or enforceable be repealed; and

WHEREAS, a repeal of Lee County Ordinance 74-4 serves a public purpose and is to the public's benefit.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS of Lee County, Florida, that:

SECTION ONE: FINDINGS

The above referenced statements in the preamble are hereby confirmed and incorporated herein as if set out in this Section at length. There is a need to repeal Lee County Ordinance 74-4 identified herein as being unenforceable, out-dated, and/or not needed at this time as local law.

SECTION TWO: INTENT

It is the intent of the Lee County Board of County Commissioners to repeal such Ordinance and a favorable vote to adopt this Ordinance will be considered a favorable vote to repeal Lee County Ordinance 74-4 stated hereafter, and such Ordinance shall be deemed repealed and of no further force or effect.

SECTION THREE:

Lee County Ordinance Number 74-4 relating to levying an additional one dollar (\$1.00) service charge for the benefit of the Official Court Reporter is hereby repealed. (A copy of which is attached as "Exhibit A").

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code; and that Sections of this Ordinance may be renumbered or relettered and that the word "Ordinance" may be changed to "Section", Article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the Code is accomplished, Sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Administrator, or his designee, without need of public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court.

SECTION FIVE: EFFECTIVE DATE

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that Office.

The foregoing Ordinance was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to vote, the vote was as follows:

BOB JANES _____
DOUGLAS ST. CERNY _____
RAY JUDAH _____
ANDREW W. COY _____
JOHN E. ALBION _____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2003.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE AS ADOPTED BY LEE COUNTY ORDINANCE NO. 97-23; PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

WHEREAS, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

WHEREAS, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed amendments are acceptable, serve a public purpose and are consistent with the terms and conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The amendments proposed by the Repealer Ordinance require amending 3-10 Lee County Administrative Code and will remove External Fee Number 6-1* from the External Fees Manual (attached hereto as Exhibit "A") is approved, and is hereby directed to be incorporated into the Lee County Administrative Code as indicated.
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner _____
and, being put to vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW W. COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2003.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

EXHIBIT A

DEPARTMENT: Elected Officials **EXTERNAL FEE NUMBER:** 6-1*
DIVISION: Clerk of Courts
PURPOSE: Court Reporter Fee For Filing Civil Action
BASIS FOR FEE: Ordinance 74-4
DATE APPROVED: 01-16-74
NOTE: *May Not Be Changed Without BOCC Approval

FEE FOR FILING CIVIL ACTION

A service charge of one dollar (\$1.00) shall be assessed as court costs against every party instituting any civil action, suit or proceedings (excluding those referred to in F.S. 741.30) in the Circuit Court of Lee County, Florida.

All funds collected shall be used by the Official Court Reporter to pay for services rendered by the Official Court Reporter to the Courts in Lee County, Florida.

LEE COUNTY, FLORIDA

FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT

PROPOSED COUNTY ORDINANCE:

NAME OF ORDINANCE: Reviser's Ordinance Repealing Ordinance #74-4

A. Statement of Purpose

Repeals Ordinance #74-4 which allowed for the collection of a \$1.00 (one dollar) service charge on civil actions.

B. Narrative Summary of Ordinance (Several Sentence Summary)

Repeals Ordinance #74-4 due to a change in law (in 1995) abolishing the Office of the Official Court Reporter.

C. Principal Division(s) or Department(s) Affected (List)

Clerks Office

**LEE COUNTY, FLORIDA
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT
PROPOSED COUNTY ORDINANCE:**

REVISER'S ORDINANCE REPEALING ORDINANCE #74-4

II. Fiscal Impact on County Agencies/County Funds. (This section to be completed by DBS).

- A. What is estimated Demand? (Develop Indicators) N/A
- B. What is estimated Workload? (Develop Indicators) N/A
- C. What are estimated costs?

	1st Year \$'s <u>Existing</u> <u>New</u>	2nd Year \$'s <u>Existing</u> <u>New</u>
Personnel	N/A	N/A
Fringe	N/A	N/A
Operating	N/A	N/A
Capital Outlay	<u>N/A</u>	<u>N/A</u>
Total	N/A	N/A

D. List the anticipated revenues to cover costs identified in II, C, above. If a fee is to be charged, answer the following:

- 1. What is the basis (rationale) for the fee? N/A
- 2. Do the anticipated fees cover the full cost of operation? If not, what percentage of the costs is covered? N/A

E. Give a brief narrative analysis of the information contained in II, A-D, above.

Repeals Ordinance #74-4 which is obsolete.

LEE COUNTY
NOTICE OF INTENT TO ENACT A COUNTY ORDINANCE

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that on Tuesday, the 22nd day of April 2003, at 5:00 o'clock p.m., in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider the enactment of a County Ordinance pursuant to Article VIII, Section 1, of the Florida Constitution and Chapter 125, Florida Statutes. The title of the proposed County Ordinance is as follows:

**A REVISER'S ORDINANCE REPEALING LEE COUNTY
ORDINANCE 74-4, PROVIDING FOR FINDINGS, INTENT,
CODIFICATION AND SCRIVENER'S ERRORS AND
EFFECTIVE DATE.**

1. Copies of this Notice and the proposed Ordinance are on file in the Minutes Office of the Clerk of Courts of Lee County. The public may inspect or copy the proposed Ordinance during regular business hours at the Office of Public Resources. The Minutes Office and Public Resources are located in the Courthouse Administration Building, 2115 Second Street, Fort Myers, Florida. Public Resources is located on the first floor and the Minutes Office is located on the second floor of the Courthouse Administration Building.
2. Interested parties may appear at the meeting in person or through counsel, and be heard with respect to the adoption of the proposed Ordinance.
3. Anyone wishing to appeal the decision(s) made by the Board with respect to any matter considered at this meeting, will need a record of the proceedings for such appeal, and may need a verbatim record, to include all testimony and evidence upon which

the appeal is to be based.

4. The Ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State, or as may be otherwise prescribed in the Ordinance.

5. If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

PLEASE GOVERN YOURSELF ACCORDINGLY.

The text of this Notice is in conformance with Section 125.66, Florida Statutes (2002), and other relevant sections of Florida law.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Charlie Green, Ex-Officio Clerk
to the Board of County Commissioners
of Lee County, Florida

APPROVED AS TO FORM:

By:  _____
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: April 10, 2003