

**OPINION NO. 96-058****Syllabus:**

1. The language of R.C. 3113.31(J) declaring that "[n]otwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a petition" pursuant to that section for a civil protection order is to be construed as prohibiting the collection of any charge, cost, fee, deposit, or expense, which is imposed by statutory enactment or rule of court as a condition of filing, at the time that the petition is first submitted to the clerk of court for filing.
  
2. The language of R.C. 3113.31(J) declaring that "[n]otwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a petition" pursuant to that section for a civil protection order does not limit or restrict the discretion and power of a court, following its final disposition of the petition, to enter an order requiring a petitioner to pay whatever charges, costs, fees, deposits, or expenses are imposed by statutory enactment or rule of court as a condition of filing the petition.

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**To: William M. Owens, Coshocton County Prosecuting Attorney, Coshocton, Ohio**  
**By: Betty D. Montgomery, Attorney General, November 6, 1996**

You have requested an opinion regarding a question of statutory interpretation. The statute is R.C. 3113.31, which sets forth the procedures by which a victim of domestic violence may petition a court of competent jurisdiction for a protection order against a perpetrator of domestic violence.<sup>1</sup> The specific subject of your request is R.C. 3113.31(J), which states as follows: "Notwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a petition pursuant to this section." You wish to know whether the foregoing language is to be construed as waiving all fees and costs incurred by a person who, being an alleged victim of domestic violence, files a petition for a protection order, or whether that language is to be construed as waiving the initial filing fee only.

One of your assistants has explained the specific circumstance that has prompted your inquiry. A person filed a petition with the court of common pleas pursuant to R.C. 3113.31. The matters alleged in the petition were subsequently resolved to that person's satisfaction without the issuance of a protection order by the court. By that time, however, certain costs associated with the filing of the petition and its prosecution had been incurred by the court and its clerk. In view of the language of R.C. 3113.31(J), the clerk of court was uncertain whether those costs could be collected from the petitioner.

The first task is to determine whether the language of R.C. 3113.31(J) is in any sense ambiguous<sup>2</sup> or unclear with respect to the fees to which it applies. *See generally Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902). If that is the case, then the further task will be to ascertain the intent of the General Assembly that prompted the enactment of R.C. 3113.31(J). The language of that statute must, in turn, be construed and applied in a way that accurately reflects that legislative intent. *Id.* R.C. 3113.31(J) provides that "[n]otwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a petition pursuant to this section." Our research leads us conclude that this provision is ambiguous and is thus subject to

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<sup>1</sup> R.C. 3113.31(C) states that "[a] person may seek relief under this section for the person, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court." The petition must contain or state an allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence; the relationship of the respondent to the petitioner, and to the victim if other than the petitioner; and a request for relief under R.C. 3113.31. R.C. 3113.31(C)(1)-(3). The court in which the petition is filed is either the domestic relations division of the court of common pleas in the case of a county that has a separate domestic relations division within its court of common pleas, or the court of common pleas in the case of a county that does not have a separate domestic relations division within its court of common pleas. *See* R.C. 3113.31(A)(2) (defining "[c]ourt" as used in R.C. 3113.31).

<sup>2</sup> The noun "ambiguity" is defined variously as "the condition of admitting of two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time" and "uncertainty of meaning or significance or of position in relation to something or somebody else." *Webster's Third New International Dictionary, Unabridged* 66 (1993). Thus, "[a]mbiguity exists if reasonable persons can find different meanings in a statute." *Black's Law Dictionary* 79 (6th ed. 1990).

interpretation. Let us first explain the reasons why we have reached this preliminary conclusion.

There are several elements of ambiguity in R.C. 3113.31(J). The first relates to the use of the term "fee." The ambiguity does not concern the precise meaning of that individual term. Rather, as suggested by your specific question, it relates to other terms, specifically "costs," "charges," "deposits," or "expenses," that may serve as synonyms for the term "fee," and the fact that the General Assembly and the courts often have used these synonyms and the term "fee" interchangeably. The question is whether R.C. 3113.31(J) presents an instance in which the term "fee" should be understood as encompassing one or more of these synonyms.

Concerning these several terms, evidence of mixed usage may be found in provisions that appear within R.C. Chapters 2303, 2323, and 2335 of R.C. Title 23. *Compare, e.g.*, R.C. 2303.20 and R.C. 2303.201 (granting the clerk of a court of common pleas the authority to charge fees of predetermined amounts for specific filing, docketing, and copying tasks he performs with respect to pleadings and other records of the court entrusted to his custody, and employing the term "fees" exclusively and in a consistent manner) *with* R.C. 2323.31 (providing that a court of common pleas "by rule may require an advance deposit for the filing of any civil action or proceeding," and further describing this deposit as "security" for "costs"<sup>3</sup>), R.C. 2335.05 (providing that "each person subpoenaed as a witness shall be allowed one dollar for each day's attendance," and "[s]uch fee shall be taxed in the bill of costs"), R.C. 2335.06 (providing that "[e]ach witness in civil cases shall receive the following fees," and thereafter enumerating the amounts of those fees to be paid each witness for attendance as a witness at court or at a deposition and for the mileage the witness has traveled and directing that those fees are "to be taxed in the bill of costs," R.C. 2335.06(A)), and R.C. 2335.28(A) (in any civil action in a court of common pleas in which a jury is sworn, "the fees of the jurors sworn shall be taxed as costs unless the court determines that the payment of the fees by a party against whom they are

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<sup>3</sup> Pursuant to R.C. 2323.31, many courts of common pleas, by local rule, require an advance deposit to secure costs that will accrue in the proceeding. The deposit ordinarily must be paid to the clerk of the court at the time a civil action is filed.

A review of the local rules promulgated pursuant to R.C. 2323.31 by the courts of common pleas in Coshocton, Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, Stark, and Summit Counties discloses that the amount of the advance deposit to be paid to those courts as security for costs upon the filing of a civil complaint is significantly greater than the fees charged by the clerk of court under R.C. 2303.20 and R.C. 2303.201. Rule 5 of the Rules of Local Practice of the Coshocton County Court of Common Pleas (1994 revision) imposes an advance deposit requirement for various categories of filings in that court, and includes a schedule that sets forth the amount of deposit required in each category. Rule 5(A) states, in pertinent part, that "[u]pon the filing of a civil action, there shall be deposited with the Clerk of Courts the sum of [\$84.00] as security for costs," and further requires advance deposits in the amounts of \$100.00 and \$125.00 respectively for dissolution and divorce petitions. The schedule also refers to these cost deposits as filing "fees."

I have been informed that a person desiring to file a petition for a protection order under R.C. 3113.31 in the Coshocton County Court of Common Pleas would be charged approximately \$132.00 in order to have the petition accepted and filed by the clerk of court, although the court does permit the clerk to forego such payment if the clerk believes it warranted. This amount includes the fees charged by the clerk of the court pursuant to R.C. 2303.20 and R.C. 2303.201 and the advance deposit for costs imposed by Rule 5 of the court in accordance with R.C. 2323.31.

proposed to be taxed would cause significant financial hardship to that party or would not be in the interest of justice"). *See also* R.C. 2335.32 ("[i]n all cases, when demanded by a person liable for the payment of any fees or costs to an officer, such officer, without charge, shall make, sign, and deliver to the person an itemized bill of such fees or costs"); R.C. 2335.35 (disposition of all unclaimed "moneys, fees, costs, debts, and damages" remaining in the hands of certain court officials and the county sheriff).

Judicial opinions also may be cited in which the courts equate the terms "fees" and "costs." The language of R.C. 2303.20 and R.C. 2303.201 is uniform in its use of the term "fees," yet in *Miller v. Gustus*, 90 Ohio App. 3d 622, 624, 630 N.E.2d 68, 69-70 (Franklin County 1993), the court of appeals stated that "R.C. 2303.20 specifies each *cost* that the clerk of the court of common pleas shall charge; and other statutes, such as R.C. 2301.21, 2303.22, and R.C. Chapter 2335, provide for additional *fees* to be taxed as *costs*." (Emphasis added.) In an earlier decision, *State ex rel. Comm'rs of Franklin County v. Guilbert*, 77 Ohio St. 333, 338, 83 N.E. 80, 81 (1907), the Ohio Supreme Court observed that "costs," in the sense the word is generally used, "may be defined as being the statutory *fees* to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgement or sentence. *The word does not have a fixed legal signification.*" (Emphasis added.) *Accord Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925, 926 (1982); *Benda v. Fana*, 10 Ohio St. 2d 259, 227 N.E.2d 197 (1967) (syllabus, paragraph one).<sup>4</sup>

These examples demonstrate that R.C. 3113.31(J)'s use of the term "fee" is reasonably susceptible of more than one meaning. There are at least two distinct possibilities in that regard. One possibility is that this term, when read strictly, applies only to a charge, whether imposed by statute or by a rule of court, that is described expressly and exclusively as a "fee." R.C. 2303.20 and R.C. 2303.201 are examples of that type of provision. The other possibility is that the term "fee" applies to any charge, whether described as a "fee," "cost," "deposit," or "expense," that is imposed for the filing of a protection order petition. An example of this type of charge appears in R.C. 2323.31, which authorizes a court to require the payment of an advance deposit, which is to serve as security for costs, for the filing of any civil action or proceeding.

Apart from the categories of charges that might be encompassed by R.C. 3113.31(J)'s directive, there also exists some uncertainty concerning the precise nature of that directive. R.C. 3113.31(J) states that "no court shall charge a fee for the filing of a petition" for a civil protection order. One possible interpretation is that the foregoing language imposes an absolute prohibition against a court and its clerk, such that the court and its clerk are foreclosed from ever collecting a filing fee from a party who files a petition under that section. As an alternative, one might read R.C. 3113.31(J) in a less strict fashion to mean that a court or its clerk are merely prohibited from collecting a filing fee or other charges from a petitioner at the time that a petition is submitted to the clerk of court for filing.

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<sup>4</sup> *Black's Law Dictionary* at 346 defines "[c]osts," in part, as "[f]ees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by statute or court rule; e.g. filing and service fees."

Which of these conceivable interpretations should prevail is a matter of legislative intent. The challenge is to ascertain the intent of the General Assembly that impelled the enactment of R.C. 3113.31(J), and adopt the interpretation that is most compatible with that intent.

The General Assembly has codified several rules of construction that offer guidance in that endeavor. Among those provisions is R.C. 1.49, which lists several factors that may be considered in identifying legislative intent:

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (E) The consequences of a particular construction;
- (F) The administrative construction of the statute.

In this instance, the object to be attained by R.C. 3113.31's operation, the circumstances under which that statute was enacted, and the consequences of adopting a broad or narrow construction of R.C. 3113.31(J) are the factors most relevant to the legislative intent inquiry. The General Assembly enacted the provisions of R.C. 3113.31 in 1978 as part of Ohio's first domestic violence act. *See* 1977-1978 Ohio Laws, Part II, 3524, 3533 (Am. Sub. H.B. 835, eff. March 27, 1979). That legislation was designed to respond to ever-increasing incidents of violence or threatened violence by and against members of the same family or household. *See generally, e.g.,* Voris, *Civil Orders of Protection: Do They Protect Children, the Tag-along Victims of Domestic Violence?*, 17 Ohio N.U.L. Rev. 599, 599 (1991) ("[d]omestic violence is a pervasive problem that the United States' courts and legislatures have addressed only in the last two decades. A tremendous increase in public awareness, in all fifty states, of the incidence of domestic violence has prompted legislation providing both civil and criminal remedies"). In particular, Am. Sub. H.B. 835 enacted R.C. 2919.25 for the purpose of "creating the criminal offense of domestic violence." Am. Sub. H.B. 835 (title). It also enacted R.C. 2919.26 for the purpose of authorizing the issuance of a temporary protection order on behalf of a victim of domestic violence whenever a complaint alleging a violation of R.C. 2919.25 is filed. *See* 1977-1978 Ohio Laws, Part II, at 3529. *See also* R.C. 2919.27 (creating the offense of violating a protection order or consent agreement approved pursuant to R.C. 2919.26 or R.C. 3113.31 or an anti-stalking protection order issued pursuant to R.C. 2903.213).

In addition to the criminal penalties provided by that legislation, Am. Sub. H.B. 835 included the procedures forth in R.C. 3113.31 "to provide specific civil remedies to combat domestic violence." *Deacon v. Landers*, 68 Ohio App. 3d 26, 28, 587 N.E.2d 395, 397 (Ross County 1990). The civil remedies available to a petitioner under R.C. 3113.31 are several:

The purpose of a civil protection order issued pursuant to R.C. 3113.31 is to provide a petitioner or other household member with protection from domestic violence (R.C. 3113.31[D] and [E]) and allows for the following relief: an order directing the respondent to refrain from abusing the family or household members;

grant possession of the residence or household to the petitioner or other family or household member to the exclusion of respondent; require the respondent to support the petitioner or family or household member; provide for temporary custody or temporary visitation in regards to minor children; require the respondent and/or petitioner to seek counseling; require the respondent to refrain from entering the residence, school, business or place of employment of the petitioner; or other relief the court considers necessary.

*Thomas v. Thomas*, 44 Ohio App. 3d 6, 7, 540 N.E.2d 745, 746 (Franklin County 1988).

One commentator has stated the following regarding the purposes served by the procedures in R.C. 3113.31 and the issuance of a protection order under that section:

*The Civil Protection Order grants immediate relief to victims of domestic violence by enjoining batterers from further violence against a family or household member.* The Civil Protection Order provides the only remedy for abuse that is not yet criminal (intimidation or harassment), and for behavior that is a misdemeanor crime with insufficient evidence for charging a conviction (threats or shoving). The Civil Protection Order can provide victims with legal relief when the victim does not want the batterer charged criminally or jailed for a misdemeanor criminal offense.

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The domestic violence civil protection order is far more comprehensive than the criminal remedy. A wide array of persons may seek civil relief. There is no residency requirement. Domestic violence is defined more liberally in the civil statute than in the criminal statute. The Civil Protection Order applies when any injury results, as opposed to the more stringent criminal sanctions requirement of "serious physical harm." The mere threat of force is sufficient to invoke the civil order but not to sustain the criminal charge. *From the victim's standpoint, the critical issue is to halt the abuse.* (Emphasis added; footnotes omitted.)

Voris, *The Domestic Violence Civil Protection Order and the Role of the Court*, 24 Akron L. Rev. 423, 425-26, 428 (1990). R.C. 3113.31 is meant to be "responsive to the immediate needs of the victims and provides a necessary alternative and supplement to criminal legal remedies." *Id.* at 432. See also Christoff, *Ohio's Domestic Violence Laws: Recommendations for the 1990's*, 19 Ohio N.U.L. Rev. 163, 170 (1992) (in comparison to the criminal arena, "[t]he civil statute provides quicker and better protection for victims").

Accordingly, the General Assembly intends the civil remedy of R.C. 3113.31 to serve victims of domestic violence as an important alternative to the criminal process under R.C. 2919.25. The goal of the statute is to provide protection to victims of domestic violence in the most expeditious fashion possible. See, e.g., R.C. 3113.31(D) (if a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing on the same day that the petition is filed, and for good cause shown at the hearing, may enter any temporary order that the court finds necessary to protect the family or household member from domestic violence). Consonant with that goal, the General Assembly has designed the provisions

of R.C. 3113.31 with a view to encouraging and facilitating the filing of petitions by or on behalf of those victims.<sup>5</sup>

It is apparent that the directive in R.C. 3113.31(J) advances that objective by eliminating a potential financial impediment to the filing of a petition under that section. In some circumstances a victim of domestic violence may be unable to afford the fee that would otherwise be required to file a petition under R.C. 3113.31, and thus would be unable to seek the protection of the court under that section. In other instances a victim of domestic violence may be unable to pay the filing fee because the alleged perpetrator of the domestic violence maintains exclusive control of the family's finances, and denies the victim any access to household funds. Thus, to ensure that a victim of domestic violence is not deterred from availing herself of the civil remedies provided by R.C. 3113.31 because of financial constraints, the General Assembly has enacted the prohibition that appears in division (J) of that section.<sup>6</sup>

This understanding of the purposes to be served by the procedures in R.C. 3113.31 suggests the appropriate interpretation of division (J)'s directive that "no court shall charge a fee for the filing of a petition pursuant to" that section. *See also* R.C. 1.11 ("[r]emedial laws and all proceedings under them shall be liberally construed in order to promote their object and assist the parties in obtaining justice"). That language is to be construed as applying to any charges, costs, fees, deposits, or expenses that are imposed by statutory enactment or rule of court *as a condition*

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<sup>5</sup> More recent evidence of the General Assembly's continuing efforts to simplify the process of filing petitions under R.C. 3113.31 for victims of domestic violence appears in 1993-1994 Ohio Laws, Part III, 5451, 5507 (Am. Sub. H.B. 335, eff. Dec. 9, 1994). That legislation made various amendments to the domestic violence statutes, including R.C. 3113.31. Uncodified section 4 of Am. Sub. H.B. 335 states the following:

The General Assembly hereby requests the Supreme Court, in consultation with the Department of Human Services, to prescribe a form that is to be filed by a petitioner seeking a civil protection order under section 3113.31 of the Revised Code and that makes reference to all the forms of relief that a court is authorized to grant under division (E) of section 3113.31 of the Revised Code, as amended by this act, contains space for the petitioner to request any of those forms of relief, and includes instructions for completing the form so that a petitioner may file the form without the assistance of an attorney.

<sup>6</sup> In the course of preparing an article on this subject, one commentator compiled a questionnaire to determine whether the criminal and civil domestic violence statutes were being implemented and whether those statutes were effective in reducing incidents of domestic violence and providing adequate protection to domestic violence victims. Christoff, *Ohio's Domestic Violence Laws: Recommendations for the 1990's*, 19 Ohio N.U.L. Rev. 163, 174 (1992). The questionnaire was sent to municipal court judges, municipal court prosecutors, domestic relations court judges, law enforcement agencies throughout the state, and directors of shelters for victims of domestic violence. *Id.* According to the author, notwithstanding the directive in R.C. 3113.31(J), "the survey showed that many courts do have a filing fee. Half of the judges responding indicated that in their counties there was, although readily waived, a filing fee for a domestic violence petition" filed pursuant to R.C. 3113.31. *Id.* at 189 (footnote omitted).

of filing a petition for a protection order under R.C. 3113.31. In other words, the language of R.C. 3113.31(J) serves as a restriction upon the *time* when a court or its clerk may require a petitioner to pay various charges, costs, fees, deposits, or expenses that are imposed by statutory enactment or rule of court. R.C. 3113.31(J) prohibits the collection of any such charges, costs, fees, deposits, or expenses from a petitioner at the time that the petition is filed.

This means that a person who submits a petition under R.C. 3113.31 to the clerk of court is not required to pay either the fees levied by R.C. 2303.20 and R.C. 2303.201 and otherwise charged by the clerk of court, or an advance deposit as security for costs otherwise imposed by a rule of court promulgated pursuant to R.C. 2323.31, in order to have the petition accepted and filed by the clerk, thereby commencing the process for obtaining a protection order from the court of common pleas. *See generally* 1985 Op. Att'y Gen. No. 85-057 at 2-211 (the language of R.C. 3109.14 that states that a fee is to be collected "[u]pon the filing for" a divorce decree or decree of dissolution "plainly signifies the filing of a complaint or petition in order to become divorced, or in order to receive a divorce decree or decree of dissolution. In contrast to the word 'of,' which might indicate that the fee be assessed upon the filing of the journal entry granting the divorce or dissolution, filing 'for' a decree conveys the sense of initiating a process"). It also means that in addition to the specific fees and cost deposits imposed pursuant to R.C. 2303.20, R.C. 2303.201, and R.C. 2323.31, a petitioner is not required to pay any other charges, costs, fees, deposits, or expenses, whether imposed by statute or by rule of court, in order to have the petition accepted and filed by the clerk of court.

This reading of R.C. 3113.31(J)'s directive also answers your question concerning the statute's function as a waiver provision. While R.C. 3113.31(J) eliminates the requirement that a person pay particular fees or cost deposits to the clerk of court before the clerk will accept and file a petition for a protection order, the statute does not constitute an unconditional waiver of any such requirement once the petition has been accepted for filing and action on the petition commenced. I do not believe a construction that expansive is necessary to the advancement of the statute's fundamental purpose of removing financial impediments to the filing of a protection order petition. Moreover, when the General Assembly intends the concept of waiver to operate with respect to a particular fee requirement, it has included a statement to that effect in plain and direct language. Examples in that regard appear in R.C. 3113.31(N)(4)(a) and (b).

Therefore, I do not read the language of R.C. 3113.31(J) as a limitation or restriction upon the discretion and power of a court, following its final disposition of the petition, to enter an order requiring a petitioner to pay whatever charges, costs, fees, deposits, or expenses are imposed as a condition of filing a protection order petition. I would include in that regard fees charged by the clerk of court pursuant to R.C. 2303.20 and R.C. 2303.201, and any deposit required to be paid by rule of court as security for costs pursuant to R.C. 2323.31.

It is, therefore, my opinion, and you are advised that:

1. The language of R.C. 3113.31(J) declaring that "[n]otwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a petition" pursuant to that section for a civil protection order is to be construed as prohibiting the collection of any charge, cost, fee, deposit, or expense, which is imposed by statutory enactment or rule of court as a condition of filing, at the time that the petition is first submitted to the clerk of court for filing.



2. **The language of R.C. 3113.31(J) declaring that "[n]otwithstanding any provision of law to the contrary, no court shall charge a fee for the filing of a petition" pursuant to that section for a civil protection order does not limit or restrict the discretion and power of a court, following its final disposition of the petition, to enter an order requiring a petitioner to pay whatever charges, costs, fees, deposits, or expenses are imposed by statutory enactment or rule of court as a condition of filing the petition.**