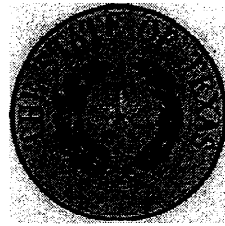


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OPEN RECORDS DIVISION



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August 4, 2003

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RD-0090-6A

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AUG 11 2003

OPINION COMMITTEE

Re: Opinion Request

FILE # ML-43211-03
I.D. # 43211

Dear General Abbot,

I would like to request an official opinion regarding the following matter:

Can a trial court order the Texas Department of Protective and Regulatory Services to pay for the services of an attorney ad litem that is appointed under the mandatory appointment of attorneys for parents when a parent has been served by citation by publication and there is no evidence of indigency or non-indigency?

Under §107.013 (a) (2) Tex. Fam. Code, the appointment of an attorney for a parent that is served by citation by publication is mandatory. Under §107.015 (a), the parents can be made to pay for the costs of the attorney unless the parents are indigent. §107.015 (b) sets out that "if the court determines that one or more of the parties is able to defray the costs of an attorney ad litem ...the fees and expenses may be order paid by one or more of those parties". §107.015 (c) implies that in suits involving termination of parental rights and indigency of the parents is shown, that any attorney ad litem appointed for the parents shall be paid from the general funds of the county.

When the Department cites a parent by publication whether by name or as unknown and there is no information as to whether or not the person is indigent, can the Department be considered as a party that can defray the costs under §107.015 (b)?

Under §40.062 of the Human Resources Code, that "the department is not required to pay any cost or fee otherwise imposed for court proceedings including..." and it proceeds to list certain fees but it does not appear to be an all inclusive list.

There are two cases out of the Court of Appeals 7th District which address some of the issues concerned. In Re Tex. Dep't of Protective & Reg. Servs. 990 S.W.2nd 848 (Tex. App.-Amarillo, 1999) (orig. proceeding), the appellate court indicated that the trial court, by assessing the ad litem fees against the Department, was directing payment of fees in a manner not authorized by the statute. Additionally, the Court indicated that subsection (b) is really meant to apply to non-indigent parents and not to the Department. Stemming from the same proceeding is In the Interest of Violet Voyles, a Child, No. 07-99-0158-CV, 2001 Tex. App. LEXIS 4190 (Amarillo January 25, 2001) (not designated for publication). In this case, the Court of Appeals clarifies from the earlier opinion that the Department was not included in the statutory term parties or litigants as used by 107.015 (b). Further the Court found that the trial court cannot order the Department to pay for the attorney ad litem as costs of court as there is no statutory authority to do so.

The parents involved in the cases above were found to be indigent. What about the unknown or known person for whom there is no information about indigency? Should the county pay or should the Department pay for attorneys appointed for such persons? It appears that the Department, regardless of parental indigency, should not be considered as a "party" that can defray the costs as contemplated by §107.015 (b) and thus the county should pay for attorneys appointed for persons cited by publication.

Sincerely,



Kelly Bradford

Assistant Parker County Attorney

Attorney for Petitioner, TDPRS

Cc: Honorable Graham Quisenberry
Duke Hooten, TDPRS Appellate Attorney
File