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RD-0093-6A

JERI YENNE

**CRIMINAL DISTRICT ATTORNEY
BRAZORIA COUNTY**

August 12, 2003

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OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
PO Box 12548
Austin, Texas 78711-2548

FILE # ML-43222-03
I.D. # 43222

Dear Attorney General Abbott:

On behalf of the Brazoria County Criminal District Attorney's Office, I am requesting an opinion in response to two related questions:

- **May a Justice of the Peace order a defendant to pay a fine, or an installment on the fine on a date that is different from the date that all or a portion of the court costs and fees are ordered due?**
- **When a defendant makes several payments and then becomes unable to pay the aggregate fines, costs and fees, if there is a specific justice court order under 42.15(b)(3) of the Code of Criminal Procedure to pay a specified portion of the fine and costs at designated intervals, may the payments be allocated or prorated differently than the court order specifies?**

ANALYSIS

Article 42.15(b) of the *Texas Code of Criminal Procedure* provides authority for a trial court to allow a fine to be paid in different intervals:

When imposing a fine and costs a court may direct a defendant:

- (1) to pay the entire fine and costs when the sentence is pronounced; or
- (2) to pay the entire fine and costs at some later date; or
- (3) to pay a specified portion of the fine and costs at designated intervals.

TEX. CODE CRIM. PROC. art. 42.15.

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Along with Article 42.15, your office developed a pro-rata rule for fine and court costs in Attorney General Opinion M-1076 (1972). See also Attorney General Opinion DM-407 (1996). In M-1076, this office explained that when a court does not collect enough money to pay all the costs, the collected money should be pro rated unless one cost has priority over another.

Recently, Legislature added subsection (e) to Article 103.0031 of the *Code of Criminal Procedure* dealing with Third Party Collection Contracts. Newly-enacted article 103.0031(e) states that if a person "pays an amount that is less than the aggregate total to be collected under subsections a and b, the allocation to the Comptroller, the county or municipality, and the private attorney or vendor shall be reduced proportionately."

Brazoria County has entered into a collection agreement with a private attorney with respect to Justice Court fines, costs and fees. Along with this agreement to recover money, the Justices of the Peace are contemplating ordering installment payments. There is some authority for trial judges to order installment payments. For example, the Court of Criminal Appeals in Ex Parte Tate, 471 S.W.2d 404 (Tex. Crim. App. 1971) states that one of the options a trial court may have when a defendant is to be fined is to "order the defendant to pay specified portions of the fine and costs as designated intervals." Tate, at 406. With this authority, may the Justices of the Peace order a defendant to make installment payments for fines on one date (or dates) for costs and fees on a different date (or dates)?

We are specifically requesting you to address 42.15(b)(3). May a court order a defendant to pay either a portion of or all of the court costs on a specified date and then at a later date pay a specified portion or the fine? It appears pretty clear under the statute that this is certainly authorized. When a defendant pays a specified portion of those court costs say immediately pursuant to the court order and then later on is ordered to pay the fine, what happens when a defendant does not comply later on? It appears that the court may order a defendant to pay a specified portion of the fine or the entire fine immediately and 30 days from now pay a specified portion of the court costs or all of the court costs. May the court specify that today you will pay the entire fine if you have the money and then at a later date you will pay all of the court costs or today you will pay a portion of the fine and at a later date pay a portion of the court costs. This appears to be clear under the statute. We have been told by our justices of the peace that they are taught state-wide that if any portion of the fine and/or court costs is paid they have to apply it to costs first and then payment of the fine. This is pursuant to previous Attorney General Opinions regarding the allocation rule. **Those opinions do not appear to address the same specifically under a court order issued under 42.15(b)(3).**

If I am a defendant and I have paid all of my fine and then I fail to pay court costs as ordered under 42.15(b)(3), how does this affect the allocation rule? If the allocation rule is applied under these circumstances then it would appear that would violate 42.15(b)(3) of the court's authority. May the allocation rule violate a specific court order under 42.15(b)(3). What I am specifically asking is if the court orders payment of the

fine on July 15th and the fine is paid by July 15th and costs at a certain date say August 15th and the fine was paid and payment of the court costs on a certain date and the court costs are not paid how does this reconcile with the allocation rule? It would appear inconsistent with the statute. What I am specifically asking is may the court order you to pay all of your fine up front and your court costs at a later date and if you default on the costs does a *capias pro fine* just issue because otherwise the allocation rule about applying to costs first would be inconsistent with and in violation of a specific court order designating payment under 42.15(b)(3). Conversely if the court ordered you to pay all of the court costs up front and a fine at a later date and you paid your court costs but did not pay your fine, what happens then as to any allocation rule?

Secondly, in the event a defendant is able to pay one or more installments but fails to pay the entire amount of fines, costs and fees, is the last partial payment prorated or must the court incorporate the prior installments that were successfully paid into an amount that should be prorated? If the answer to this second question is in the affirmative then, must the treasurer retain all monies received through the payment of installments until the total aggregate amount is collected or it is determined that such amount cannot and will not be fully paid?

Lastly, Section 42.15 of the Code of Criminal Procedure has been in existence for years long before collection statutes developed. It appears that none of the previous Attorney General opinions regarding the allocation rule addresses the same where there is a court order in effect under 42.15(b)(3) C.C.P.

Please comment as to what bearing, if any, the terms of a third party collections contract has on the allocation rule previously stated by your office and/or a court order issued under 42.15(b)(3) C.C.P.

If you have questions or need further information, please call me.

Sincerely yours,



JERI YENNE

JY:dp