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March 1, 2006

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FILE # ML-44 658-06
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Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0459-GA

Re: Request for Attorney General Opinion

Dear General Abbott:

Denton County is seeking guidance from your office regarding the payment for transcripts in cases where the State initiates proceedings against a child's parents under chapter 262 of the Texas Family Code wherein both parents have been deemed indigent by the court and granted appointed attorney ad litem.

Scenario

The Texas Department of Family and Protective Services ("Department"), through the local District Attorney's Office, filed a suit affecting the parent-child relationship in which termination of the parent-child relationship was requested¹. Subsequently, both parents were served with citation, deemed indigent by the court, and appointed Attorney Ad Litem under Tex. Family Code § 107.013.

During the course of the suit, but prior to trial or a final judgment, there were several adversarial hearings in which the official court reporter took stenographic notes. Depositions were also taken wherein contract court reporters took stenographic notes. In preparation for trial, one of the court-appointed attorneys requested that the court reporters transcribe their notes of all of the hearings and depositions and provide him

¹ Assume jurisdiction and venue are proper in a Denton County District Court.

with transcripts of same prior to trial. Upon receiving the request, the official district court reporter completed the transcripts and determined that the cost to produce the requested transcripts was \$2,000.00. The court-appointed attorney informed the court and court reporter that he did not have the ability to pay, or refused to pay, but insisted that his indigent client was entitled to free non-appellate transcripts in preparation for trial.

Questions regarding non-appellate transcripts

1. Is an indigent parent entitled to free non-appellate transcripts² of hearings and depositions? If so, is the official court reporter and/or contract court reporter required to produce same without compensation or is the county obligated to pay the court reporters' fees?
2. Does a District Court Judge have the authority to order the official court reporter to produce the requested non-appellate transcripts without extra compensation?³
3. Does a District Court Judge have the authority to order the County to pay for non-appellate transcripts of hearings and depositions?
4. May the costs of non-appellate transcripts be assessed against the County as ad litem attorney's fees or expenses?
5. May the costs of non-appellate transcripts, ordered by an attorney ad litem, be assessed against the County under the authority of Tex. R. Civ. P. 145?

Analysis

Several Attorney General Opinions make it clear that an official court reporter is entitled to charge a fee, in addition to his or her salary, for preparing requested transcripts. See Op. Tex. Att'y Gen. No. GA-0164, and Op. Tex. Att'y Gen. No. GA-0155, both citing Tex. Gov't Code Ch. 52. The question is, although an official court reporter is entitled to charge non-indigent parties a fee for transcripts, under what circumstances is an official court reporter entitled to receive payment from the county and when is he or she required to provide the transcripts without receiving payment?

In cases initiated under the authority of the Texas Family Code, Tex. Fam. Code § 109.003 specifies that if a party requests a statement of facts **in appeal** of a suit, and has been deemed indigent by the court, the trial court may order the county in which the trial was held to pay the costs of preparing the statement of facts. Further, Tex. Civ. Prac. & Rem. Code § 13.003 states, that under certain circumstances, a court reporter shall provide, without costs, a transcript for appealing a judgment. In both instances, the statutes address appellate transcripts, not pre-judgment transcripts. As such, I have been unable to locate any authority authorizing or mandating the County to pay for non-appellate transcripts that have been requested by a party deemed indigent by the court.

² The non-appellate transcripts will be used for trial preparation, not appellate purposes. The need for appeal has not been determined because the trial is still pending.

³ Extra compensation is compensation other than the official court reporter's salary.

May the costs of non-appellate transcripts be assessed against the county as attorney ad litem fees or expenses? Tex. Fam. Code § 107.015 mandates that attorney's fees and expenses of an attorney ad litem appointed to represent a child or indigent parent, in suits filed by a governmental entity, shall be paid from the general funds of the county. In reading this statute there is no indication that fees for non-appellate transcripts can be assessed against the county as attorney's fees or expenses. If, however, the cost of non-appellate transcripts can be assessed as attorney fees and expenses, is the court reporter required to produce the transcripts when requested and wait to receive payment until the attorney ad litem's bill is approved by the court?

May the costs of non-appellate transcripts, ordered by an attorney ad litem be assessed against the county under the authority of Tex. R. Civ. P. 145? As you know, Tex. R. Civ. P. 145 addresses the procedure for an indigent's ability to initiate an action without paying court costs, however, it does not address the payment of transcript fees.

Questions regarding appellate transcripts

1. Assuming an indigent parent perfects an appeal after the final judgment was entered, under what circumstances, if any, is the County obligated to pay for an indigent parent's⁴ appellate transcript? (also, see related questions below).

Analysis

Tex. Fam. Code § 109.003 specifies that if a party requests a statement of facts in appeal of a suit, and has been deemed indigent by the court, the trial court **may order** the county in which the trial was held to pay the costs of preparing the statement of facts. **Does this permissive language indicate that if a trial court does not order the county to pay, the court reporter must provide the statement of facts without extra compensation?**

Tex. Civ. Prac. & Rem. Code § 13.003 states that under certain circumstances, a court reporter shall provide, without cost, a transcript for appealing a judgment. **If the court finds that the appeal is not frivolous and the transcript is needed to decide the issues, is the court reporter required to provide same without extra compensation?**

Prior to 1997, Texas Rules of Appellate Procedure 13(k), 40(a)(3), and 53(j), when read together, provided that in any case where the appellant had filed the affidavit (of indigence) required by Rule 40 to appeal his case without bond, and no contest is filed or any contest is overruled, the court or judge upon application of appellant shall order the official reporter to prepare a statement of facts, and deliver it to appellant, but the reporter shall receive no pay for same. See *In Re Vandewater*, 966 S.W.2d 730 (Tex. App. – San Antonio 1998, no pet.). Effective

⁴ Assume the court has found that the appeal is not frivolous and the transcript is needed to decide the issues. Also assume the application was contested by the court reporter under Tex. R. App. P. 20 and the contest was denied and the appellant was allowed to proceed without pre-payment.

September 1, 1997, Rules 13(k), 40(a)(3), and 53(j) were repealed and Tex. R. App. P. 20 was created, which deleted the language "the reporter shall receive no pay for same" and added the provision addressing the appellant's later ability to pay. See Notes and Comments, Tex. R. App. P. 20 (Vernon Ann. 2003).

The new rule (Tex. R. App. P. 20(j)) now states if a party establishes indigence, the trial court clerk and court reporter must prepare the appellate record without prepayment. Further, Tex. R. App. P. 20(l) states that if a party who has proceeded in the appellate court without having to pay all the costs is later able to pay some or all of the costs, the appellate court may order the party to pay costs to the extent of the party's ability. **Based on the revised language, is there ever a circumstance where the County would be obligated to pay costs?**

Thank you for your time and consideration in this matter. If you need any additional information to make a determination in this case, please do not hesitate to call.

Respectfully Submitted,

Bruce Isaacks
Criminal District Attorney
Denton County, Texas



Brody Shanklin
Assistant District Attorney

cc: Commissioners Court
Hon. Carmen Rivera-Worley, Presiding Judge of the 16th Judicial District Court