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OPINION COMMITTEE

# OFFICE OF COURT ADMINISTRATION

CARL REYNOLDS  
Administrative Director

May 24, 2006

**By Certified Mail, Return Receipt Requested**

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

FILE # ML-44825-06  
I.D. # 44825

RQ-0497-GA

Re: Request for opinion concerning the additional filing fee funding basic civil legal services for indigents established by Local Government Code, Section 133.152.

Dear General Abbott:

Two successive sections of the Local Government Code establish filing fees to support civil legal services for indigents. Both sections require payment of the fees upon the initial filing of a civil lawsuit in district court. Currently, there is considerable uncertainty as to whether both fees should be charged. I respectfully request your opinion in order to resolve this uncertainty.

## Fee One – The Consolidated Fee

Section 133.151 was added to the Local Government Code in 2003 by the 78th Legislature.<sup>i</sup> The statute did not create a new fee, but instead consolidated two fees that had been contained in former Sections 51.701 and 51.941 of the Government Code.<sup>ii</sup> The amount of this consolidated fee (\$45 in family law cases and \$50 in other civil cases) equals the sum of the two old fees.

The consolidated fee is directed to two different state accounts. One of these accounts is the basic civil legal services account of the judicial fund [the BCLS account]. BCLS account funds are to be used in programs approved by the supreme court that provide basic civil legal services to indigents. In family-law cases, \$5 of the \$45 consolidated fee goes to the BCLS account. In other civil cases, \$10 of the \$50 fee goes to the BCLS account. These amounts are identical to the amounts directed to the BCLS account under the former law.

## Fee Two – The Additional Fee

Section 133.152 was also added to the Local Government Code in 2003 by the 78<sup>th</sup> Legislature.<sup>iii</sup> The statute requires an additional fee (\$5 in family-law cases, \$10 in other civil cases) upon the filing of a suit in district court. This additional fee is a new fee.

### Should Both Fees Be Assessed?

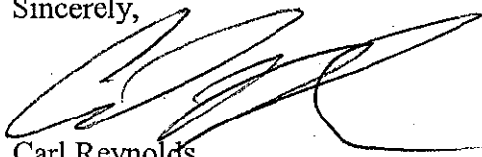
Taken together, Sections 133.151 and 133.152 double the amount of money directed to the BCLS account from initial filing fees in district court cases. In family-law cases, \$10 per case goes to the BCLS account as opposed to \$5 under the former law. In other civil cases, \$20 per case is directed to the BCLS account instead of \$10 under the prior law.

However, many district clerks are disregarding the plain wording of Section 133.152 at the direction of the Office of the Comptroller of Public Accounts. Apparently, the comptroller's view is that the Legislature's sole purpose in adding Section 133.152 was to perpetuate the BCLS filing fee on counterclaims and other actions within existing cases. Rather than charging the additional fee when a suit is initially filed, many district clerks are charging only the consolidated fee. We have been unable to find legislative history to support this interpretation.

Thus, a conflict exists between the plain language of Section 133.152 and an allegation of contrary legislative intent. As Administrative Director of the Office of Court Administration, I respectfully request your opinion in order to resolve this conflict. Please advise me as to whether district clerks should collect the additional fee called for by Section 133.152 upon the initial filing of a lawsuit.

Thank you for your assistance.

Sincerely,



Carl Reynolds  
Administrative Director

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<sup>i</sup> Act of June 1, 2003, 78th Leg., R.S., ch. 209, § 62(a), 2003 Tex. Gen. Laws 979, 997 (House Bill 2424). The text of Section 133.151 is attached to this request as Appendix 1.

<sup>ii</sup> The first of the old fees was a \$40 fee to be used for court-related purposes for the support of the judiciary. *See* Act of September 4, 1986, 69th Leg., 2d C.S., ch. 11, § 6, 1986 Tex. Gen. Laws 25, 27 (House Bill 27), *amended by* Act of May 5, 1993, 73rd Leg., R.S., ch. 144, § 3, 1993 Tex. Gen. Laws 298 (House Bill 36), *repealed by* Act of June 1, 2003, 78th Leg., R.S., ch. 209, § 85, 2003 Tex. Gen. Laws 979, 1003 (House Bill 2424). The text of the repealed statute that contained this fee (former Government Code, Section 51.701) is attached to this request as Appendix 2.

The second of the old fees was a fee of \$5 in family-law cases and \$10 in other civil cases. The fees were to be deposited to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent. *See* Act of May 20, 1997, 75th Leg., R.S., ch. 699, § 1, 1997 Tex. Gen. Laws 2336 (Senate Bill 1534), *relettered and renumbered by* Act of April 23, 1999, 76th Leg., R.S., ch. 62, § 19.01(28), 1999 Tex. Gen. Laws 127, 413 (Senate Bill 1368), *amended by* Act of June 1, 2003, 78th Leg., R.S., ch. 209, § 73, 2003 Tex. Gen. Laws 979, 1000 (House Bill 2424). The Legislature's line-by-line amendment of the statute that contained this fee (Government Code, Section 51.941) prior to the statute's amendment is attached to this request as Appendix 3.

<sup>iii</sup> Act of June 1, 2003, 78<sup>th</sup> Leg., R.S., ch. 209, § 62(a), 2003 Tex. Gen. Laws 979, 997 (House Bill 2424). The text of Section 133.152 is attached to this request as Appendix 4.

### Appendix 1

§ 133.151. CONSOLIDATED CIVIL FEE ON FILING A CIVIL SUIT  
IN DISTRICT COURT. (a) In addition to each fee collected under  
Section 51.317(b)(1), Government Code, the clerk of a district  
court shall collect the following fees the filing of any civil suit:

- (1) \$45 for family law cases and proceedings as  
defined by Section 25.0002, Government Code; and
- (2) \$50 for any case other than a case described by  
Subdivision (1).

(b) The fees under Subsection (a) shall be collected and  
remitted to the comptroller in the manner provided by Subchapter B.

(c) The comptroller shall allocate the fees received under  
this section to the following accounts and funds so that each  
receives to the extent practicable, utilizing historical data as  
applicable, the same amount of money the account or fund would have  
received if the fees for the accounts and funds had been collected  
and reported separately:

- (1) the judicial fund to be used for court-related  
purposes for the support of the judiciary; and
- (2) the basic civil legal services account of the  
judicial fund for use in programs approved by the supreme court that  
provide basic civil legal services to an indigent.

Added by Acts 2003, 78th Leg., ch. 209, § 62(a), eff. Jan. 1,  
2004.

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**Appendix 2**

~~Sec. 51.701. ADDITIONAL FILING FEE FOR JUDICIAL FUND.~~

~~\_\_\_\_\_ (a) In addition to each fee collected under Section 51.317(b)(1), the district clerk shall  
\_\_\_\_\_ collect a \$40 filing fee to be used for court related purposes for the support of the  
\_\_\_\_\_ judiciary.~~

~~\_\_\_\_\_ (b) The district clerk shall send the fees collected under this section to the comptroller at  
\_\_\_\_\_ least as frequently as monthly. The comptroller shall deposit the fees in the judicial fund.~~

~~\_\_\_\_\_ (c) Sections 51.320 and 51.321 apply to a fee collected under this section.~~

~~\_\_\_\_\_ (d) The district clerk, at the time fees are sent under Subsection (b), shall report to the  
\_\_\_\_\_ comptroller the amount of fees collected under this section for cases assigned to a  
\_\_\_\_\_ statutory county court.~~

### Appendix 3

SECTION 73. (a) Section 51.941, Government Code, is amended to read as follows:

Sec. 51.941. ADDITIONAL FILING FEE IN APPELLATE COURTS FOR BASIC CIVIL LEGAL SERVICES FOR INDIGENTS. (a) In addition to other fees authorized or required by law, the clerk of the supreme court and courts of appeals [each court] shall collect a \$25 fee [the following fees] on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee[+]

~~[(1) supreme court and courts of appeals \$25;~~  
~~[(2) district courts, for other than divorce and other family law matters \$10;~~  
~~[(3) district courts, divorce and other family law matters \$5;~~  
~~[(4) statutory and constitutional county courts \$5;~~  
~~[(5) justice of the peace courts \$2].~~

(b) Court fees under this section [subchapter] shall be collected in the same manner as other fees, fines, or costs in the case.

(c) The clerk shall send the fees collected under this section [Subsection (a)(1)] to the comptroller not later than the last day of the month following [10th day after the end of] each calendar quarter.

~~(d) [The clerk shall remit the fees collected under Subsections (a)(2) (5) at least as frequently as monthly to the county treasurer or the person who performs the duties of the county treasurer. The county treasurer or the person performing the duties of the county treasurer shall keep a record of the amount of money received under this subsection. The county treasurer or the person who performs the duties of the county treasurer shall remit the fees collected, minus an amount ordered retained by the county commissioners court as provided by Subsection (e), to the comptroller not later than the 10th day after the end of each quarter.~~

~~[(e) The commissioners court by order may require the county treasurer or the person who performs the duties of the county treasurer to deposit in the county's general revenue account five percent of the fees collected under Subsections (a)(2) (5) to reimburse the county for the expense of collecting and remitting the fees collected under Subsections (a)(2) (5).~~

~~[(f)] The comptroller shall deposit the fees received under this section to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to the indigent.~~

(e) ~~[(g)]~~ In this section, "indigent" [+]  
~~[(1) "Family law matters" has the meaning assigned "family law cases and proceedings" by Section 25.0002.~~  
~~[(2) "Indigent" means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.~~

(b) This section takes effect January 1, 2004.

#### Appendix 4

§ 133.152. ADDITIONAL FILING FEES FOR CERTAIN ACTIONS AND PROCEEDINGS IN DISTRICT COURT FOR BASIC CIVIL LEGAL SERVICES FOR INDIGENTS. (a) In addition to other fees authorized or required by law, the clerk of a district court shall collect the following fees on the filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee:

(1) \$5 in family law cases and proceedings as defined by Section 25.0002, Government Code; and

(2) \$10 in any case other than a case described by Subdivision (1).

(b) The fees under this section shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The comptroller shall deposit the fees to the credit of the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent.

Added by Acts 2003, 78th Leg., ch. 209, § 62(a), eff. Jan. 1, 2004.