



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 5, 1988

Honorable Stanley D. Curbo
County Attorney
Young County
P. O. Box 298
Graham, Texas 76046

LO-88-50

Dear Mr. Curbo:

Pursuant to the Texas Mental Health Code, article 5547, V.T.C.S., as county attorney you sought court-ordered mental health services for an unnamed person. As required by article 5547-42, a hearing was held. As required by article 5547-47(b), you offered testimony from a psychiatrist. This psychiatrist was employed the Wichita State Hospital. He testified under a subpoena whose issuance you requested. In addition, as authorized by article 5547-47(c), you offered testimony from a social worker (a "nonphysician mental health professional"). The social worker was also employed by Wichita State Hospital. He also testified under a subpoena whose issuance you requested.

The psychiatrist has submitted a bill to the county for reimbursement for six hours away from his office at \$65.00 an hour. The social worker has submitted a bill to the county for reimbursement for six hours away from his office at \$30.00 per hour. You ask whether the county is obligated to pay these bills. The answer is no.

Texas Rule of Civil Procedure 179 provides as follows:

Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning such witness. If any witness, after being duly summoned, shall fail to attend, such witness may be fined by

the court as for contempt of court, and an attachment may issue against the body of such witness to compel the attendance of such witness; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that all lawful fees have been paid or tendered to such witness.

Section 22.001(a) of the Civil Practices and Remedies Code sets out the fee to which each witness is entitled:

(a) A witness is entitled to:

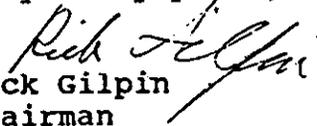
(1) one dollar for each day the witness attends court; and

(2) six cents for each mile the witness travels in going to and returning from court.

That is the only fee to which a witness is entitled.

Article 5547-15 does require the court to order the payment of reasonable compensation to physicians for an examination when they are appointed by the court under the Texas Mental Health Code. Article 5547-15 further provides that such compensation shall be taxed as costs in the case. Article 5547-14 provides that the county that initiates proceedings under the Texas Mental Health Code must pay these taxable costs. Unless a physician is appointed by the court, however, he is not entitled to compensation. In the case you present, the staff psychiatrist of the Wichita State Hospital was not appointed by the court. Thus, he is not entitled to a professional fee.

Very truly yours,


Rick Gilpin
Chairman
Opinion Committee

RG/FSM/lcd

Prepared by F. Scott McCown
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