



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1994

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 94-097

Re: Assessment of fees for filing an involuntary health commitment (ID# 24416)

Dear Mr. Driscoll:

You have requested an opinion from this office concerning the assessment of fees for filing an involuntary health commitment case. You specifically ask the following:

1. What fees, if any, should be collected upon filing of an involuntary mental health commitment case; and
2. Whether the county clerk may collect such fees, if any, on a sliding scale based on the patient's income.

Section 12(a) of the Probate Code governs the applicability of laws regulating costs and provides that in the absence of any other authority, the provisions of law regarding costs in ordinary civil cases "shall apply to all matters in probate." You preface your first question by suggesting that the central issue before us is whether an involuntary commitment hearing is, as a matter of law, a matter in probate. If such a hearing were to be considered a "matter in probate", then section 12(a) of the code would control. However, we conclude that a commitment hearing is not a matter in probate, but rather a guardianship proceeding in which proper jurisdiction lies with the probate court.

The legislature may provide for the temporary commitment, for observation and/or treatment of mentally ill persons not charged with a criminal offense, for a period not to exceed ninety days, by order of the county court without the necessity of a trial by jury. Tex. Const. art. I, § 15; *Ex parte Giannatti*, 189 S.W.2d 191 (Tex. Civ. App.--San Antonio 1945, no writ). Although the county court has the general jurisdiction of a probate court, the legislature has created by special act courts for various counties designated as statutory probate courts. See Gov't Code §§ 25.0001 - .2570 (general provisions relating to statutory courts).

In all counties that have probate courts specially created by the legislature, these courts share jurisdiction concurrently with the county courts in relation to all proceedings for the commitment of persons not charged with any criminal offense who are mentally ill, or against whom information of mental illness has been given to the judge of any probate court, whether the proceeding is for commitment of such persons for treatment or for observation. See *id.* § 25.003(d). The judges of statutory probate courts have the authority to hear and determine matters relating to these proceedings in the same manner

and with the same powers as are vested in the county judges. *Parsons v. State*, 677 S.W.2d 786 (Tex. App.--San Antonio 1984, no writ); *Higgins v. State*, 591 S.W.2d 646 (Tex. Civ. App.--Fort Worth 1979, no writ) (Tarrant County Court at Law No. 2 vested with probate jurisdiction to issue order of temporary involuntary commitment). Thus the legislature has vested statutory probate courts with the express authority to consider matters traditionally beyond the scope of matters in probate.

You ask for our opinion with regard to the statutory probate courts of Harris County. Section 25.1034 of the Government Code provides for the establishment of a statutory probate court in that particular county and states as follows:

The Probate Court No. 3 of Harris County has primary responsibility for mental illness proceedings and for all administration related to mental illness proceedings, including budget preparation, staff management, and the adoption of administrative policy. The Probate Court No. 4 of Harris County has secondary responsibility for mental illness proceedings.

Gov't Code § 25.1034(b). Thus a statutorily created probate court as well as all other probate courts are specifically authorized to preside over involuntary mental health proceedings. Such a grant of authority would imply that such proceedings are matters in probate. However we are not convinced that such outcome was intended. The Probate Code defines the term "matters in probate" as follows:

"Probate matter," "Probate proceedings," "Proceedings in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to the estate of a decedent.

Prob. Code § 3(bb). Prior to 1993, section 3(bb) provided that such terms were "synonymous and include[d] a matter or proceeding relating to guardianship, as well as a matter or proceeding relating to the estate of a decedent, and proceedings regarding incompetents. Acts 1955, 54th Leg., ch. 55 at 88, *amended by* Acts 1993, 73d Leg., ch. 957, § 3. House Bill 2685, the amending legislation, was enacted with the intent to reform guardianship law in Texas by the codification of existing guardianship law along with certain necessary substantive changes. The drafters noted that many aspects of guardianship law were commingled with provisions of the Probate Code relating to the administration of decedents' estates and that many of the relevant provisions had not been amended in the last forty years. House Bill 2685 was introduced in an effort to clarify and update the law by:

1. . . . separating the guardianship provisions in the probate code away from the estate provisions; [and]
2. . . . modifying certain provisions to meet the changes that have occurred in society in the last forty years.

House Comm. on Judicial Affairs, Bill Analysis, H.B. 2685, 73d Leg. (1993). Although the legal disability of incompetent persons furnishes the necessity for guardianship and the exercise of probate jurisdiction, such jurisdiction may only be acquired by the appointment of a guardian pursuant to relevant provisions of the Probate Code. *Kelsey v. Trisler*, 74 S.W. 64 (Tex. Civ. App. 1903, no writ). Thus we believe that an involuntary mental health commitment is a variety of guardianship proceeding, and that the legislative intent in amending section 3(bb) of the Probate Code was to eliminate such proceedings from the definition of "matters in probate."

Furthermore, in ascertaining legislative intent, words and phrases shall be read in context and construed according to rules of grammar and common usage. *Linick v. Employers Mut. Cas. Co.*, 822 S.W.2d 297 (Tex. App.--San Antonio 1991, no writ); Gov't Code § 311.011. Thus we conclude that the plain meaning of the term "probate matter" and any variation thereof, only refers to "a matter or proceeding relating to the estate of a decedent." However, this does not conclude our analysis.

Section 118.052 of the Local Government Code sets forth the fee schedule for clerks of county courts. Subsection (2) addresses probate court actions and specifically authorizes the collection of \$40 fee for mental health services. Although the Harris County Clerk is authorized to collect a \$40 fee for mental health services, such fee may not be collected upon submission of an application for emergency detention or court-ordered treatment of a mentally ill person. In such an instance the county is responsible for the costs of commitment, but at some future date it may seek reimbursement from a person liable for the patient's support. Attorney General Opinion JM-1234 (1990) at 5; Local Gov't Code § 118.052. Furthermore, section 571.018 of the Health and Safety Code addresses costs related to a mental health or mental retardation hearing; the costs provision is set forth in a manner which indicates that filing fees are not included. Thus we conclude that the county clerk is not authorized to collect a filing fee with regard to an involuntary mental health commitment case.

We now turn to your second question which concerns the use of a sliding scale as a basis for the collection of such fees. Article V, section 20 of the Texas Constitution requires that the fees which may be collected by the county clerk be "prescribed" by the legislature. Because section 118.052 prescribes that a \$40 fee be collected by the county clerk for mental health services, we conclude that it is beyond the scope of the clerk's office to collect such fees on the basis of a sliding scale.

S U M M A R Y

Section 118.052(b) of the Local Government Code provides that in certain circumstances the county clerk may collect a fee of \$40 for mental health services. However, the clerk is not authorized to collect a fee upon the filing of an application for an involuntary mental health commitment case. In the event that collection is made pursuant to section 118.052 of the Local Government Code, article V, section 20 of the Texas Constitution prohibits such collection on the basis of a sliding scale.

Very truly yours,

A handwritten signature in cursive script that reads "Toya Cirica Cook".

Toya Cirica Cook
Assistant Attorney General
Opinion Committee