

RQ-559

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Opinion Committee

June 2, 1993

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FILE # ~~20610-93~~ RQ-00559-DM
I.D.# 20610

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Attention of Opinions Committee

Re: Maximum amount of costs for protective orders applied for under Chapter 71 of the Texas Family Code, and

Proof of indigency pursuant to Rule 145 of the Texas Rules of Civil Procedure

Sir:

Questions have arisen in our county regarding the amount that may be charged for the filing fee and other costs for protective orders applied for under Chapter 71 of the Texas Family Code. Sections 71.04 and 71.07 seem to be in conflict regarding the maximum amount that may be charged.

Also, portions of Rule 145 of the Texas Rules of Civil Procedure, Affidavit of Inability, seem to conflict regarding the procedure necessary to prove inability to pay costs.

Therefore, I request an opinion on the following questions and have provided a brief of the law.

QUESTIONS:

1. Is \$36 the maximum fee that may be charged under any circumstances to an applicant for a Chapter 71 protective order, pursuant to subsection 71.04(e), or may the clerk of the court charge additional fees for the cost of each service of notice of an application (be it \$20 or the cost of postage), pursuant to subsections 71.07 (i) and (g) if:
 - a. service is attempted but not completed;

- b. there is more than one respondent requiring service; or
 - c. there are extensions or reschedulings which require service on the respondent(s)?
2. Is such an applicant's receiving government entitlement(s) proof enough of inability to pay costs under Rule 145 of the Texas Rules of Civil Procedure, or must the applicant provide additional information in the affidavit such as nature and amount of employment income, other income (interest, dividends, etc.), spouse's income if available to the applicant, property owned other than homestead, cash or checking account, dependents, debts, and monthly expenses?

BRIEF:

Section 71.04(e), Texas Family Code, Application for Protective Order

This section of the Texas Family Code relates to the filing fee for an application for a protective order. The fee is \$16 except for service fees as provided in Section 71.07, and an applicant may not be assessed any other fees, costs, charges, or expenses by the clerk of the court or any other public official in connection with the application. Under any circumstances, the total fees related to the filing of and service of notice of an application for a protective order, including fees under Section 71.07, may not exceed \$36. An applicant who is not able to pay the costs may file an affidavit of inability as provided by the Texas Rules of Civil Procedure.

Section 71.07(i), Texas Family Code, Fee for Service of Notice of Application for Protective Order

The fee for service of notice of an application for a protective order charged to the applicant under this section may not be more than \$20 if delivered in person or the cost of postage if delivered by mail.

Section 71.07(g), Texas Family Code, Manner of Service of Notice of Application for Protective Order

The manner of service of notice of an application for protective order shall be the same as a citation under the Texas Rules of Civil Procedure, except that service by publication is not authorized.

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Rule 106, Texas Rules of Civil Procedure, Method of Service of Citation

This rule states that citation shall be served by delivering to the defendant, in person, a true copy of the citation with a copy of the petition attached thereto, or mailing to the defendant a true copy of the citation with a copy of the petition attached thereto.

Rule 145, Texas Rules of Civil Procedure, Affidavit of Inability

In its initial paragraph, this rule states that a party who is unable to pay costs is defined as a person who is presently receiving a governmental entitlement based on indigency or any other person who has no ability to pay costs. However, Section 2 states that the affidavit shall contain complete information as to, among other things, the nature and amount of the party's employment income, other income, spouse's income if available, property owned, cash or checking account, dependents, debts, and monthly expenses.

Section 311, et seq. Government Code (Code Construction Act)

This section of the Government Code was enacted to aid in construing and clarifying misunderstood language in codes adopted by the State of Texas.

Section 311.011, Common and Technical Usage of Words

Words and phrases shall be read in context and construed according to the rules of grammar and common usage; those words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Section 311.021, Intention in Enactment of Statutes

In enacting a statute, it is presumed that:

- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (5) public interest is favored over any private interest.

CONCLUSION:

Research of the issues posed by the afore-listed questions reveals that case law which can shed any light on how to answer these issues is nonexistent. The Code Construction Act also offers no

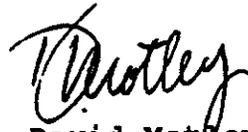
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assistance. Therefore, we have analyzed the issues using a "plain meaning" analysis.

It is our conclusion that the answer to the first question regarding filing fees and other costs is that under any circumstances, regardless of the number of attempts of service, the number of respondents to be served, or whether there were extensions granted by the Court requiring additional service, the amount that can be charged for filing and service fees for an application for protective order can never exceed \$36.

As for the second question regarding affidavits of inability to pay costs, we conclude that, pursuant to the definition in the initial paragraph of Rule 145 of the Texas Rules of Civil Procedure, a person receiving governmental entitlements based on indigency is a person who has no ability to pay costs. Therefore, other information enumerated in Section 2 of the rule: "nature and amount of employment income, other income, (interest, dividends, etc.), spouse's income if available to the party, property owned (other than homestead), cash or checking account, dependents, debts, and monthly expenses," is wholly unnecessary, the fact that a person is receiving a government entitlement being sufficient evidence of indigency.

Very truly yours,



David Motley
County Attorney

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