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RQ-0582-2C

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July 30, 2002

The Honorable John Cornyn
Attorney General of The State of Texas
Attention: Opinion Committee Chairperson
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42734-02
I.D. # 42734

Re: Recovery of cost of serving summons in Juvenile Justice Code proceedings; OP-02-086

Dear Attorney General Cornyn:

On behalf of the El Paso County Juvenile Board, I am soliciting your opinion regarding whether the state may recover the cost of serving a summons in a Juvenile Justice Code proceeding from a non-prevailing child or other non-prevailing party under Texas Rule of Civil Procedure 131.

Section 51.17(a) of the Juvenile Justice Code provides as follows:

Except for the burden of proof to be borne by the state in adjudicating a child to be delinquent or in need of supervision under Section 54.03(f) or otherwise when in conflict with a provision of [the Juvenile Justice Code], the Texas Rules of Civil Procedure govern proceedings under [the Juvenile Justice Code].

Tex. Fam. Code Ann. § 51.17(a) (Vernon Supp. 2002) (emphasis added). Thus, the Texas Rules of Civil Procedure govern Juvenile Justice Code proceedings unless the rules conflict with a specific provision of the Code. In re S.H., 846 S.W.2d 103, 105 (Tex. App.—Corpus Christi 1992, no writ).

Texas Rule of Civil Procedure 131 provides that “[t]he successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided.” Tex. R. Civ. P. 131 (“Rule 131”). Such recoverable costs specifically include “subpoena/citation fees.” Allen v. Crabtree, 936 S.W.2d 6, 8 (Tex. App.—Texarkana 1996, no writ).

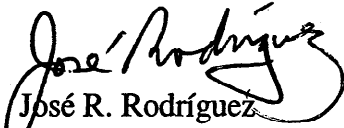
Costs incurred by the state in Juvenile Justice Code proceedings include the cost of serving a summons on: (1) the child named in the petition; (2) the child's parent, guardian, or custodian; (3) the child's guardian ad litem; and (4) any other person who appears to the court to be a proper or necessary party. Tex. Fam. Code Ann. § 53.06(a) (Vernon 1996). Although Section 53.07(d) of the Code provides that the court may authorize payment for service of such summons from the general funds of the county, *id.* § 53.07(d), nowhere does the Code provide that such payment may not subsequently be recovered from a non-prevailing party under Rule 131.

Further, although Section 54.0411 of the Code requires the child or person responsible for the child's support to pay a juvenile probation diversion fund fee as part of court costs, this section does not preclude recovery of other court costs under Rule 131. *See id.* § 54.0411 (requiring payment of a \$20 "costs of court" fee, ten percent of which may be retained by the county, with the remainder to be deposited in the state-wide juvenile probation diversion fund); *see also id.* § 54.0461 (Vernon Supp. 2002) (requiring payment of a \$5 graffiti eradication fee as a "cost of court" in certain cases, but similarly not precluding recovery of other court costs under Rule 131).

Accordingly, because there is no conflict between the Juvenile Justice Code and Rule 131, the state should be entitled to recover the cost of serving a summons in a Juvenile Justice Code proceeding from a non-prevailing child or other non-prevailing party.

Thank you for your consideration of this matter.

Very truly yours,


José R. Rodríguez
El Paso County Attorney