



OFFICE OF COURT ADMINISTRATION

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DEC 01 2004

OPEN RECORDS DIVISION

ALICIA G. KEY
Administrative Director

November 30, 2004

RQ-0297-GA

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By Certified Mail, Return Receipt Requested

OPINION COMMITTEE

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

FILE # MC-44042-04
I.D. # 044042

Re: Request for opinion concerning the proper filing fee for petition for order of non-disclosure.

Dear Attorney General Abbott:

The Director of the Office of Court Administration (OCA) is statutorily directed to consult with and assist court clerks. TEX. GOV. CODE §72.023(c). In compliance with this directive, OCA publishes procedure manuals for county clerks and district clerks. Additionally, OCA fields telephone calls from clerks and answers their questions regarding proper clerical procedures. Recently, several clerks have inquired as to the proper fee for the filing of a petition for an order of nondisclosure.

The 78th Legislature passed Senate Bill 1477 which served to amend Section 411.081 of the Government Code by adding subsections (d) through (h). Act of May 31, 2003, 78th Leg. R.S., ch. 1236, §4, 2003 Tex. Gen. Laws 3499, 3500-01. These new subsections allow certain persons who have been placed on deferred adjudication community supervision to petition the court that placed the person on deferred adjudication for an order of nondisclosure. An order of nondisclosure prohibits public disclosure of criminal history record information related to the offense giving rise to the deferred adjudication.

Subsection (d) states that "[a] person may petition the court for an order of nondisclosure on payment of a \$28 fee to the clerk of the court." As mentioned in the paragraph above, the petition is to be filed with the court that placed the defendant on deferred adjudication. Many clerks are treating these petitions as motions within the existing criminal case and are charging only this \$28 fee for filing the petition.

Other clerks are treating these petitions as the initial pleading in a new civil case and are charging not only the \$28 fee, but also all of the filing fees that are charged in a regular civil case. As support for this practice, clerks point to a "statement of legislative intent" by State Representative Terry Keel, Chair of the House Committee on Criminal Justice that considered Senate Bill 1477, which reads as follows:

A petition filed pursuant to the terms of this act [SB 1477] should be filed as an ex parte petition on the civil docket of the court that originally granted the deferred adjudication. In addition to the \$28.00 fee specified in the bill, the clerk should also assess the same fees that would otherwise apply to the filing of a civil petition.

H.J. of TEX. R.S. 4586 (2003). This statement of legislative intent is shown as an entry in the House Journal on May 28, 2003 – the same day that SB 1477 was passed by the House of Representatives.

The statutory language and the statement of legislative intent are somewhat discordant.

First, the statute speaks of petitioning the court for an order of nondisclosure "on payment of a \$28 fee." No other filing fee is intimated. The simple language of the statute suggests that the \$28 fee is the only fee that needs to be paid. The statement of legislative intent, however, differs.

Second, the statute speaks of "petition[ing] the court that placed the defendant on deferred adjudication." The statement of legislative intent declares that the petition is to be filed "on the civil docket of the court that granted the deferred adjudication." Although the two statements appear to be harmonious, a defendant who was placed on deferred adjudication by a court with no civil jurisdiction cannot file a petition on the court's civil docket because the court has no civil docket. Several statutory county courts have only criminal jurisdiction and, accordingly, no civil dockets. Examples of such courts include all ten county criminal courts in Tarrant County. See TEX. GOV'T CODE §25.2223.

A final issue in determining the proper fee for filing a petition for an order of nondisclosure is the similarity of such a petition to a petition for expunction. Senate Bill 1477 not only added provisions to Section 411.081 of the Government Code concerning orders of nondisclosure, but also made minor amendments to Chapter 55 of the Code of Criminal Procedure concerning expunction orders.

The effects of an order of expunction and an order of nondisclosure are essentially the same. Expunction orders are available to individuals who have been acquitted of criminal charges (and certain other individuals), see TEX. CRIM. PROC. CODE §55.01, while orders of nondisclosure are available to persons who have been placed on deferred adjudication and satisfy certain requirements. See TEX. GOV'T CODE §411.081(d). Although the effects of the two kinds of orders are similar, the petitions potentially are addressed to different courts and clerks.

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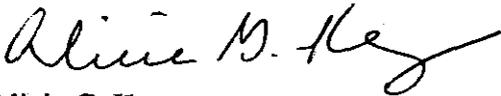
Petitions for expunction must be filed in the district courts, even in misdemeanor cases, which are normally handled by county-level courts. *See* TEX. CRIM. PROC. CODE §55.02. Thus, many petitions for expunction are filed in courts other than the one in which the case was first handled, and the cases may be processed by a different clerk's office. Accordingly, district clerks treat these petitions as independent civil lawsuits and charge the same fees for the filing of a petition for expunction as for the filing of a petition in a normal civil case.

Petitions for an order of nondisclosure must be filed in the same court that originally granted the deferred adjudication, so the petition is processed by the same clerk's office, and it is not necessary for the clerk to treat the case as an independent civil lawsuit. If the statement of legislative intent were followed, however, then these petitioners would pay not only the same filing fees as for filing an independent civil lawsuit, but they would also pay an extra \$28 surcharge on top of those filing fees.

As Administrative Director of the Office of Court Administration of the Texas Judicial System, I respectfully request your opinion concerning the proper fee for the filing of a petition for an order of nondisclosure. Additionally, I request your opinion concerning the court in which a petition for an order of nondisclosure should be filed where the court that placed the petitioner on deferred adjudication has no civil jurisdiction.

Thank you for your assistance.

Sincerely,



Alicia G. Key
Administrative Director