



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

August 31, 2020

The Honorable Troy Farrell Odom  
Chancellor, Twentieth Chancery Court District  
Post Office Box 700  
Brandon, Mississippi 39043

Re: Payment of Attorney's Fees in Commitment Proceedings

Dear Chancellor Odom:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

### **Question Presented**

May the chancery court assess, to the petitioner, costs of counsel appointed pursuant to Mississippi Code Annotated Section 41-32-5(2)?

### **Background**

Mississippi Code Annotated Section 41-31-5 pertains to the proceedings that follow a petition for the commitment of alcoholics and drug addicts to *public* institutions for treatment. Section 41-32-5(2) pertains to the proceedings that follow a petition for the commitment of alcoholics and drug addicts to *private* treatment facilities.

Subparagraph (2) of each statute requires a chancellor to, before a hearing may be held on the commitment petition, appoint an attorney to represent respondents who do not otherwise have an attorney. Miss. Code Ann. §§ 41-35-5(2), 41-32-5(2). Both statutes are silent as to who is responsible for the payment of those court-appointed attorneys' fees. It is the position of the Rankin County Chancery Court, however, to assess those attorneys' fees to the petitioner, classifying such charges as court costs.

### **Brief Response**

The Court may assess, to a non-indigent respondent or his/her estate, the costs of legal representation incurred by an attorney appointed to represent the respondent in proceedings related

to alcohol and/or drug commitment to either a public or private facility.

We find no authority for a court to assess the petitioner (affiant) for the costs of legal counsel appointed pursuant to Section 41-32-5(2), relating to commitment to *private* treatment facilities.

### **Applicable Law and Analysis**

As a general rule, statutes or statutory provisions that relate to the same person or thing, or to the same class of persons or things or appear to be indicative of a general policy on a cognate subject matter are regarded as in *pari materia*. *Lopez v. Holleman*, 69 So. 2d 903 (Miss. 1954); MS AG Op., *Taylor* at \*3 (July 10, 1995).

Recognizing that there appears to be no statutory provision designating who should be assessed the expenses for the services of an appointed attorney in commitment proceedings to *private* institutions, we are of the opinion that Section 41-21-61 *et seq.*, applicable to commitments to *public* institutions, is indicative of legislative intent on a cognate subject matter and is, therefore, applicable to commitment proceedings to *private* institutions.

Section 41-21-63 provides, in relevant part:

(1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315.

...

(2)(a) The chancery court, or the chancellor in vacation, shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges unless paragraph (b) of this subsection applies.

Section 41-21-79 provides:

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars (\$400.00). Costs incidental to the court proceedings permitted under this section may not be charged to the affiant nor included in the fees and assessments permitted under Section 41-21-65(6).

Section 41-21-65(6) states:

The chancery clerk may charge a total filing fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law which include, but are not limited to, assessments for the Judicial Operation Fund (Section 25-7-9(3)(b)); the Electronic Court System Fund (Section 25-7-9(3)(a)); the Civil Legal Assistance Fund (Section 25-7-9(1)(k)); the Court Education and Training Fund (Section 37-26-3); State Court Constituent's Fund (Section 37-26-9(4)); and reasonable court reporter's fee. *Costs incidental to the court proceedings as set forth in Section 41-21-79 may not be included in the assessments permitted by this subsection.* The total of the fees and assessments permitted by this subsection may not exceed One Hundred Fifty Dollars (\$150.00).

Miss. Code Ann. § 41-21-65(6) (emphasis added).

Costs incidental to the court proceedings as set forth in Section 41-21-79 include reasonable attorneys' fees. These fees, pursuant to Sections 41-21-65(6) and 41-21-79, may not be charged to the petitioner/affiant but only to the non-indigent respondent or his/her estate.

Based upon our opinion that Section 41-21-61 *et seq.* is applicable to commitment proceedings to public and private institutions, we further opine that the costs of legal counsel appointed by the court to represent the respondent in such alcohol and/or drug commitment proceedings to a private facility are to be borne by a non-indigent respondent or by his or her estate.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter  
Special Assistant Attorney General