
Opinion No. 61-181 — October 31, 1961

SUBJECT: JUVENILE COURT — Attorney appointed by, to represent minor or his parent or guardian is not entitled to compensation from county funds.

Requested by: COUNTY COUNSEL, MADERA COUNTY

Opinion by: STANLEY MOSK, Attorney General
Edsel W. Haws, Deputy

The Honorable Everett L. Coffee, County Counsel of Madera County, has requested the opinion of this office as to whether an attorney appointed by the juvenile court to represent a minor or a parent or guardian of the minor is entitled to compensation from funds of the county.

The conclusion is as follows:

An attorney thus appointed is not entitled to compensation from county funds.

ANALYSIS

The Legislature at the 1961 Regular Session revised the Juvenile Court Law (Stats. 1961, ch. 1616, commencing with sec. 500 Welf. & Inst. Code). This revision made numerous substantive changes pertaining to the detention of minors,

hearing procedures, and the rights of minors and parents in juvenile court proceedings.

Section 633 of the Welfare and Institutions Code provides that upon the appearance of a minor or parent before the juvenile court they shall be informed of their right to be represented at every stage of the proceedings by counsel. Sections 634 and 700 provide that where the minor or his parent or guardian desires counsel but is indigent and cannot for that reason employ counsel, the court may appoint counsel and in such a case, the court must appoint counsel for the minor if he is charged with misconduct which would constitute a felony if committed by an adult. However, there is no provision in the Juvenile Court Law authorizing the payment of compensation to an attorney thus appointed. Section 741 of the Welfare and Institutions Code provides:

"The juvenile court may, in any case before it in which a petition has been filed as provided in Article 7 (commencing with Section 650), order that the probation officer obtain the services of such psychiatrists, psychologists, or other clinical experts as may be required to assist in determining the appropriate treatment of the minor and as may be required in the conduct or implementation of such treatment. Payment for such services shall be a charge against the county."

Apparently this section would not authorize the compensation of counsel (See 26 Ops. Cal. Atty. Gen. 216, 217).

Other statutory provisions authorizing compensation of court appointed counsel in criminal proceedings, sections 987a and 1241 of the Penal Code are not applicable inasmuch as proceedings before the juvenile court are not criminal in nature. (sec. 503, Welf. & Inst. Code). It should be noted that section 27706 of the Government Code as amended by ch. 1616, Stats. 1961, provides that the public defender upon order of the court shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in juvenile court proceedings wherein the minor is alleged to be or who has been found to be within the description of sections 601 or 602 of the Welfare and Institutions Code.

It has long been established in this state that in the absence of statutory authorization an attorney is not entitled to compensation for representing an indigent person upon the appointment of the court (*Hill v. Superior Court*, 46 Cal. 2d 169, 172; *Rowe v. Yuba County*, 17 Cal. 61; *Gibson v. County of Sacramento*, 37 Cal. App. 523; 36 Ops. Cal. Atty. Gen. 85; 26 Ops. Cal. Atty. Gen. 216; 25 Ops. Cal. Atty. Gen. 221).

It is therefore concluded that no authorization exists for the compensation of an attorney appointed to represent an indigent minor or his parents or guardian in juvenile court proceedings.

Opinion No. 55-43—March 23, 1955

SUBJECT: ATTORNEY'S FEES claimed as compensation for defending indigent defendant in a misdemeanor proceeding in a Justice Court, where attorney was appointed for such defense by magistrate of the court in a county having no Public Defender are not a proper charge against the county.

Requested by: DISTRICT ATTORNEY, BUTTE COUNTY.

Opinion by: EDMUND G. BROWN, Attorney General.
F. G. Girard, Deputy.

Honorable C. Keith Lyde, District Attorney of Butte County, has submitted the following question for our opinion:

"Where a Magistrate of a Justice Court in a County having no Public Defender appoints an attorney to defend an indigent defendant in a misdemeanor prosecution, after a request by such defendant for such an appointment, and where the Magistrate approves the appointed attorney's claim for reasonable compensation, is such a claim, when presented to the County Auditor, a legal charge against the County?"

Our conclusion may be summarized as follows:

A claim for compensation by an attorney appointed by the justice court to defend an indigent defendant in a misdemeanor prosecution is not a proper county charge.

ANALYSIS

In the absence of statutory authorization, it has long been settled in this state that an attorney is not entitled to compensation for services rendered in acting in the defense of indigent criminal defendants (*Rowe v. Yuba County*, 17 Cal. 61, *Lamont v. Solano County*, 49 Cal. 158; *Gibson v. County of Sacramento*, 37 Cal. App. 523; see also 5 Am. Jur. sec. 157, p. 354; 6 Cal. Jur. 2d, sec. 187, p. 385).

In *Rowe v. Yuba County*, 17 Cal. 61, 63, the court stated:

"... it is part of the general duty of counsel to render their professional services to persons accused of crime, who are destitute of means, upon the appointment of the Court, when not inconsistent with their obligations to others; and for compensation, they must trust to the possible future ability of the parties. Counsel are not considered at liberty to reject, under circumstances of this character, the cause of the defenseless, because no provision for their compensation is made by law."

Again in *Lamont v. Solano County*, 49 Cal. 158, the court held there was no implied promise on the part of the county to pay an attorney for services rendered an indigent criminal defendant, nor could the attorney secure repayment from the county for expenses incurred in defending the prisoner. The weight of authority in the United States is also to the effect that in the absence of statutory authorization for payment of assigned counsel, no right to the payment for such services exists (130 A.L.R. 1439; 144 A.L.R. 847). It is therefore apparent that unless statutory authorization for payment can be found, a court-appointed attorney performing services in defending an indigent person charged in the justice court with a misdemeanor cannot be compensated for such services at county expense.

In 1941, authority to compensate assigned counsel for an indigent defendant was first provided for in section 987a of the Penal Code (Calif. Stats. 1941, Ch. 451, p. 1741), as follows:

"The board of supervisors may by ordinance provide that in any case in which counsel is assigned in the superior court to defend a person who is charged therein with crime and who desires but who is unable to employ counsel, such counsel, upon recommendation of the court or a judge thereof, may receive a reasonable sum for compensation and for necessary expenses the amount of which shall be determined by the supervisors, to be paid out of the general fund of the county.

"This section shall not apply in any county or city and county in which a public defender is elected or appointed."

In 1951, section 987a was amended to provide:

"In any case in which counsel is assigned in the superior court to defend a person who is charged therein with crime, or is assigned in a municipal or justice's court, or justice court as established pursuant to the Municipal and Justice Court Act of 1949, to represent such a person on a preliminary examination in such a court and who desires but who is unable to employ counsel, such counsel, except in a county, or city and county, in which there is a public defender, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county."

While in the instant case the services of counsel were performed in the justice court, such services were not concerned with an examination preliminary to a superior court proceeding and thus compensation for those services could not be authorized pursuant to section 987a.

The only other statute which might be applicable is section 29602 of the Government Code, which states:

"The expenses necessarily incurred in the support of persons charged with or convicted of crime and committed to the county jail, and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law are county charges."

Therefore, we must determine whether compensation of defense counsel is one of those "... other services in relation to criminal proceedings for which no specific compensation is prescribed by law." The present section 29602 was originally enacted by the Legislature in 1947 and was based on former section 4307 of the Political Code (Calif. Stats. 1947, ch. 424, sec. 1, p. 1231). In *Gibson v. County of Sacramento*, 37 Cal. App. 523, 529, the court in construing section 4307 of the Political Code, carefully distinguished the case before it from the situation arising upon the appointment of counsel to defend indigent criminal defendants and concluded that in the latter case, "... *The legislature, for obvious reasons, has made no provision for payment for services rendered by an attorney in such a case, although it undoubtedly has the right to make such services a county charge, to be compensated for out of the treasury of the county.*" (Italics added.)

As the present section 29602 of the Government Code is in the exact language of its predecessor, section 4307 of the Political Code, we must assume that the Legislature intended to adopt the judicial construction of the section along with its language, and therefore compensation to counsel for services rendered in defending indigent prisoners was excluded therefrom (*People v. Halner*, 43 A.C. 737, 742; *Associated Boat Industries v. Marshall*, 104 Cal. App. 2d 21, 23; *Union Oil Associates v. Johnson*, 2 Cal. 2d 727, 734-735).

On the basis of the above decisions, it is our opinion that no authority exists whereby appointed counsel can be compensated by the county for services rendered in defending indigents charged with misdemeanor violations in the justice court.

Opinion No. 55-185—November 2, 1955

SUBJECT: ATTORNEY appointed by court to represent person financially unable to retain counsel in a proceeding to commit such person as mentally ill, under sections 5000 et seq. of Welfare and Institutions Code may not be paid fee or reimbursed for expenses from county funds.

Requested by: DISTRICT ATTORNEY, SAN MATEO COUNTY.

Opinion by: EDMUND G. BROWN, Attorney General.
Elizabeth Palmer, Deputy.

Honorable Keith C. Sorenson, District Attorney of San Mateo County, has presented the following questions:

1. May an attorney appointed by a judge of the Superior Court to represent an indigent person who is financially unable to employ counsel in a proceeding to commit such person as mentally ill, pursuant to sections 5000, *et seq.*, of the Welfare and Institutions Code, be compensated for his services in representing such person from funds of the county in which such proceeding is held?
2. May such an appointed attorney be reimbursed for expenses necessarily incurred in representing such person?

Our conclusions may be summarized as follows:

An attorney so appointed may neither be compensated from county funds for his services to an indigent person, nor can he be reimbursed for his necessary expenses.

ANALYSIS

In the absence of statutory authorization, it has long been settled in this State that an attorney is not entitled to compensation or necessary expenses incurred in representing an indigent person upon the appointment of the court (*Rowe v. Yuba County*, 17 Cal. 61; *Viner v. Utrecht*, 26 Cal. 2d 261; *Macco Construction Co. v. Fickert*, 76 Cal. App. 2d 295; 25 Ops. Cal. Atty. Gen. 221, and cases cited therein).

Section 5054 of the Welfare and Institutions Code provides that the judge may appoint an attorney to represent an alleged mentally ill person at the hearing to determine mental illness and *shall* appoint an attorney to represent such person if a request therefor is made. However, there is no statute specifically authorizing the payment of compensation or necessary expenses to an attorney from county funds for representing an indigent person in such commitment proceedings. Section 5150 of the Welfare and Institutions Code provides in part as follows:

"The cost necessarily incurred in determining the mental illness or insanity calling for care or commitment under this code of an indigent person and securing his admission into a state hospital, . . . is a charge upon the county from which he is committed. Such costs include the fees of the medical examiners allowed by the judge before whom the testimony of the medical examiners is given."

Medical fees are specifically included but not attorney's fees nor his costs. In view of the long declared policy that attorneys have a duty to perform such services for indigents gratuitously, we are of the opinion that the legislature did not intend section 5150 to be authorization to include attorney's fees and his costs with the costs chargeable against county funds.

The court in *Hill v. Superior Court*, 134 A.C.A. 783, 788, in referring to Penal Code section 987(a), authorizing payment of compensation to counsel assigned to defend persons in certain types of criminal proceedings stated the basic concept as follows:

"It is true . . . that throughout the English-speaking world the burden has been laid upon attorneys to give their services freely and without compensation to the indigent in need of them, but the very fact that the practice endured so long demonstrates that the Legislature has intended for policy reasons of its own that this practice should be departed from in criminal cases."

Other than the reading into section 5150 of the Welfare and Institutions Code a provision for compensating attorneys, there is no specific statute on the

subject. Inasmuch as the Legislature specifically included fees of medical examiners but not attorneys' fees in section 5150 and in view of the well-established principle that an attorney is not entitled to compensation for the defense of an indigent when appointed by the court in the absence of a specific statute to the contrary, we can only conclude that the legislature never intended to include attorneys' fees and expenses with the cost chargeable against county funds in such a situation.

Opinion No. 62-101 — August 22, 1962

SUBJECT: ATTORNEY — Right of court appointed, to defend indigent in mental illness hearings, mental illness trials, sexual psychopathy hearings, or sexual psychopathy trials to compensation from county funds discussed.

Requested by: COUNTY COUNSEL, SANTA BARBARA COUNTY

Opinion by: STANLEY MOSK, Attorney General
Edward A. Hinz, Jr., Deputy

The Honorable Robert K. Cutler, County Counsel of Santa Barbara County, has requested the opinion of this office as to whether an attorney appointed by the court to represent an indigent person at mental illness hearings, mental illness trials, sexual psychopathy hearings, or sexual psychopathy trials is entitled to compensation from the funds of the county.

The conclusions are as follows:

An attorney thus appointed at mental illness hearings is entitled to compensation from the funds of the county as fixed by the court only in counties which have no public defender.

An attorney thus appointed at mental illness trials, sexual psychopathy hearings, or sexual psychopathy trials is not entitled to compensation from the funds of the county.

ANALYSIS

In the absence of statutory authorization, it has long been established in this State that an attorney is not entitled to compensation or necessary expenses incurred in representing an indigent person upon appointment of the court (*Hill v. Superior Court*, 46 Cal. 2d 169, 172; *Rowe v. Yuba County*, 17 Cal. 61, 63; *Gibson v. County of Sacramento*, 37 Cal. App. 523, 529; 38 Ops. Cal. Atty. Gen. 154; 36 Ops. Cal. Atty. Gen. 85; 26 Ops. Cal. Atty. Gen. 216; 25 Ops. Cal. Atty. Gen. 221).

Section 5054 of the Welfare and Institutions Code, the only section relating to compensation for attorneys at mental illness hearings (26 Ops. Cal. Atty. Gen. 216), provides:

"The alleged mentally ill person shall be present at the hearing, and if he has no attorney, the judge may appoint an attorney to represent him, or if a request is made for an attorney by the alleged mentally ill person, the judge shall appoint an attorney to represent him and in a county where there is no public defender fix the compensation to be paid by the county for such services, or the judge may order the county public defender to represent him at the hearing if he determines the person is not financially able to employ counsel."

This section provides that the judge at the mental illness hearing must appoint an attorney for an alleged mentally ill person where requested. In the absence of a request, the matter of appointment is in the discretion of the court (*Campbell v. People*, 190 Cal. App. 2d 253, 257).

Where an attorney has been appointed either pursuant to a request or in the judge's discretion, the attorney is entitled to compensation from the funds of the county as fixed by the court in counties which do not have a public defender.

Sections 5125-5129 of the Welfare and Institutions Code provide for a jury trial as to the question of mental illness after the mental illness hearing. These sections do not provide for compensation for court-appointed attorneys.

Section 5511 of the Welfare and Institutions Code, which provides for the appointment of counsel at sexual psychopathy hearings states as follows:

"The alleged sexual psychopath shall be present at the hearing, and if he has no attorney, the judge may appoint an attorney to represent him, or the judge may order the county public defender to represent him at the hearing, if he determines that the person is not financially able to employ counsel."

This section does not provide for compensation for court-appointed counsel. It is, however, within the judge's discretion where he determines that the person is not financially able to employ counsel to appoint the county public defender.

Section 5512.5 of the Welfare and Institutions Code providing for the right to a jury trial following the sexual psychopathy hearing states as follows:

"Persons committed as sexual psychopaths to the department for placement in a state hospital following an observation placement under this chapter shall have the same rights to jury trial as provided in this code for mentally ill persons."

This section, obviously, provides for the same rights which exist at mental illness trials where, as shown above, no right to compensation exists.

Thus, in view of the long established principle that an attorney is not entitled to compensation for representing an indigent person when appointed by the court in the absence of a specific statute so providing, a county is not chargeable for attorney fees at mental illness trials, sexual psychopathy hearings, or sexual psychopathy trials. At mental illness hearings, however, the Legislature has expressly provided that such attorneys are entitled to compensation from the funds of the county as fixed by the court in counties which have no public defender.