

MENTAL ILLNESS: Under Sections 202.805 and 202.807
PROBATE COURT: of House Bill 43 of the 75th General
DIVISION OF MENTAL HEALTH: Assembly, (1) An indigent patient
is entitled to an attorney and the
attorney is entitled to a reasonable fee for his services which
fee is assessed as a cost to be paid by the county of residence
regardless of whether or not the proceedings are held in the county
of residence or in the county wherein the facility is located.
(2) Commitment proceedings instituted under Section 202.807 pur-
suant to and as prescribed by Section 202.805 are to be held in
the county wherein the facility is located unless the patient
applies to have said proceedings transferred to the jurisdiction
of the probate court of his county of residence as defined in Sec-
tion 202.010.

OPINION NO. 537

December 2, 1969

Honorable Zane White
Prosecuting Attorney
Phelps County Courthouse
Rolla, Missouri 65401



Dear Mr. White:

This opinion is in response to your request concerning an interpretation of certain provisions of House Bill 43 of the 75th General Assembly (V.A.M.S. Act No. 79).

Specifically your questions are as follows:

"Section 202.805 laws of 1969 provide . . .
'the head of the facility shall notify the
Probate Court of the County wherein the
facility is located' . . . Section 202.807
subsection 4, laws of 1969. . . 'it is pro-
vided that if the patient is not represented
by an attorney, the Court shall appoint one
and if the patient is unable to pay an attorney
fee, the fee shall be assessed as costs and
paid by the County . . . '

"QUESTION 1. Would the County responsible
for the attorney fees and costs be the county
of residence as defined in section 202.010,
laws of 1969? Or would it be the county
wherein the facility is located?

"QUESTION 2. In the event of a temporary
or emergency committment from a county in
which the facility was not located would
subsequent proceedings on involuntary com-
mittment be in the county wherein the

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facility is located or in the county of residence as defined in section 202.010 or in the county from which the patient was sent for emergency or temporary care and treatment?"

In answer to your first question, Section 202.805 of the bill provides in full as follows:

"1. Within ten days after the admission of any person under the provisions of section 202.800, or 202.803 the head of the facility shall notify the probate court of the county wherein the facility is located of such patient. The notification shall contain the full name of the patient, his address, manner of admission, the name of his next of kin, spouse or guardian, and such other information concerning the patient as may be necessary.

"2. Upon receipt of the notice the judge shall note it on his docket and if no proceeding is instituted under section 202.807 by any person authorized to do so within five days, he shall order the patient's release. The head of the facility upon receipt of the order of release shall release the patient immediately.

"3. If the proceeding under section 202.807 is instituted within the five-day period, the court shall hold the hearing therein provided for within ten days thereafter and shall order that all preliminary acts required by section 202.807 be performed before the hearing. The court may order the temporary confinement continued until the rendition of judgment in the proceeding, but the judgment shall be rendered not later than five days after the end of the hearing."

The pertinent sections of Section 202.807 relative to the judicial procedure for involuntary hospitalization provide:

"4. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered and shall not

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be bound by the rules of evidence. If it is found that the proposed patient is not represented by an attorney, the court shall appoint an attorney to represent him, and if it is further found that the patient is unable to pay an attorney's fee for services rendered in the proceedings, the court may allow a reasonable attorney's fee for the services which fee shall be assessed as costs and paid by the county together with other costs in the proceedings.

* * * * *

"9. If the hearing arising out of section 202.790, 202.800, 202.803, or 202.805 is in a court not of the county of residence and the patient makes application that the hearing be held in his county of residence, the court shall order the proceedings with all papers, files, and transcripts of the proceedings to be transferred to the probate court of the county of residence.

"10. Any fees of all services required of the probate judge, clerk or court for which reimbursement has not otherwise been made shall be paid at the expense of the county of residence."

As can be seen from the above cited sections, Section 202.805 requires that the head of the facility notify the probate court of the county wherein the facility is located. The proceedings for involuntary hospitalization initiated and held under Section 202.807 of the bill require, among other things, that a person be represented by an attorney and that if such person is unable to pay an attorney's fee for services rendered the court may allow reasonable attorney's fees for the services which fees shall be assessed as costs and paid by the county together with other costs in the proceedings.

The provisions of Paragraph 10 of Section 202.807 of the bill provide that any fees of all services required of the probate judge, clerk or court for which reimbursement has not otherwise been made shall be paid at the expense of the county of residence.

In our view it was the legislative intent that all such costs incurred, including attorney fees for indigent patients, be at the expense of and paid by the county of residence.

In answer to your second question, the jurisdiction is either in the probate court in which the facility is located or in the

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probate court of the county of residence as defined. As we have stated, Section 202.805 of the bill requires that the superintendent notify the probate court of the county where the facility is located of the patient's hospitalization; and after that, proceedings must be instituted under Section 202.807 of the bill or the patient released.

While Paragraph 1, Section 202.807 merely refers to "the probate court", it is clear in reading it in context with Section 202.805 that it means the probate court wherein the facility is located or the probate court of the county of residence.

When the cause is placed on the docket of the probate court of the county wherein the facility is located under Section 202.805 and proceedings thereafter timely instituted pursuant to Section 202.807, the jurisdiction remains in such court for the purpose of the involuntary hospitalization proceeding unless application is made by the proposed patient under Paragraph 9 of Section 202.807 to have the cause transferred to the probate court of his county of residence.

CONCLUSION

It is therefore the opinion of this office that under Sections 202.805 and 202.807 of House Bill 43 of the 75th General Assembly that:

(1) An indigent patient is entitled to an attorney and the attorney is entitled to a reasonable fee for his services which fee is assessed as a cost to be paid by the county of residence regardless of whether or not the proceedings are had in the county of residence or in the county wherein the facility is located.

(2) Commitment proceedings instituted under Section 202.807 pursuant to and as prescribed by Section 202.805 are to be held in the county wherein the facility is located unless the patient applies to have said proceedings transferred to the jurisdiction of the probate court of his county of residence as defined in Section 202.010.

The foregoing opinion, which I hereby approve, was prepared by my assistant John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General