S T A T E O F T E N N E S S E E
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Opinion No. 08-162

Clerks Fees in Department of Human Services Child Support Enforcement Actions

QUESTION

By way of clarifying Op. Tenn. Att'y Gen. 08-115 and 08-118, Tenn. Code Ann. ' 8-21-401(a)(7)(R)(2002 Repl.) contains an exclusion for petitions and orders Anot otherwise provided.@ If a Apetition@ or order filed for the purpose of establishing, modifying and enforcing child support orders is a Apleading,@ should the filing and docketing of a petition be charged by the Court Clerks instead under Tenn. Code Ann. '' 8-21-401(a)(2)(2002 Repl.) or 8-21-401(a)(4)(A)(2002 Repl.) if the clerk has not elected to become a flat fee clerk?

OPINION

Yes. Under Tenn. Code Ann. ' 8-21-401(a)(7)(R)(2002 Repl.), if petitions are Aotherwise provided@ for elsewhere in ' 8-21-401, the fee(s) should be assessed under those more appropriate provisions. The Apetitions@ described in the request qualify as Apleadings@ and should be charged as such under ' 8-21-401(a)(2)(2002 Repl.).

ANALYSIS

The Commissioner of the Department of Human Services has sought clarification regarding whether, considering Opinions 08-115 and 08-118, certain of its petitions seeking to establish, modify, and enforce support orders should be charged by court clerks under provisions other than ' 8-21-401(a)(7)(R)(2002 Repl.).[1]

Tennessee Code Annotated ' 8-21-401(a)(7)(R)(2002 Repl.) states:

[1]Specifically, the Commissioner seeks to clarify whether such Apetitions@ should be charged under Tenn. Code Ann. '' 8-21-401(a)(2)(2002 Repl.) (addressing filing of complaints and other pleadings) or 8-21-401(a)(4)(A)(2002 Repl.) (addressing entry of orders, complaints, motions, and pleadings upon the rule docket).

> (a) Circuit court clerks, criminal court clerks, clerks and masters of chancery courts, clerks of courts of general sessions, clerks of trial justice courts, county clerks, clerks of juvenile and probate courts, clerks of law and equity courts, and clerks of city courts, insofar as commissions for receiving and paying over privilege taxes on litigation are concerned, are authorized to demand and receive for their services, where appropriate the following fees for services indicates:
>
> > (R) For filing and docketing petitions and orders *not otherwise provided*.....75.00

(Emphasis supplied.)

Subsection (R) above contains an exception for filing and docketing of petitions and orders Anot otherwise provided.@ Therefore, to the extent a petition or order of the Department is otherwise provided for in ' 8-21-401(2002 Repl.), any more appropriate fee provision would apply, such as pleadings that are appropriately charged under Tenn. Code Ann. ' 8-21-401(a)(2)(2002 Repl.) or entry of certain items, such as complaints, motions, or other pleadings, upon the rule docket under Tenn. Code Ann. ' 8-21-401(a)(4)(A), (C), (D), and (E)(2002 Repl.).[2]

The request asks our office to presume that Apetitions@ filed for the purposes stated are, in fact, pleadings. Section 8-21-401(a)(2)(2002 Repl.) provides a $2.00 charge A[p]er filing each bond, bill, complaint, motion or other pleading. . ..@ To determine what is a pleading, courts of record will look to the applicable rules for guidance. The Tennessee Rules of Civil Procedure, for example, limit pleadings to complaints, answers, replies to counterclaims, and cross-claims. Tenn. R. Civ. P. 7. According to *Black=s Law Dictionary*, a pleading is Aa formal document in which a party to a legal proceeding [ ] sets forth or responds to [ ] claims [ ].@ *Black=s Law Dictionary* 1191 (8th ed. 2004). Generally, in child support enforcement actions, Apetitions@ to establish paternity and associated support would qualify as pleadings because they set forth claims for relief, and they should be treated as such.

Finally, as mentioned, entries on the rule docket would be governed by ' 8-21-401(a)(4)(A)(2002 Repl.). This section governs (in relevant part) entry of Acomplaint[s], motion[s], or other pleading[s]@

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[2]In Opinion 08-115, we opined A[t]he activities of the Department in >filing and docketing petitions and orders arising from child support actions and collection efforts= do not fit under any other provisions of Tenn. Code Ann. ' 8-21-401.@ To the extent petitions can be determined to be pleadings under Tenn. Code Ann. ' 8-21-401(a)(2)(2002 Repl.) or under 8-21-401(a)(4)(2002 Repl.), and to the extent entry of orders upon the Rule docket are chargeable under ' 8-21-401(a)(4) the opinions may have interpreted ' 8-21-401(2002 Repl.) too narrowly.

upon the rule docket. As set forth above, Apetitions@ of the sort described in this opinion request would qualify as Apleadings@ and should be charged as such when entered on the rule docket.[3]

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[3]APetitions@ of this sort might also qualify as Amotions@ within the meaning of this statute.