



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

March 5, 1997

The Honorable James M. Kuboviak  
Brazos County Attorney  
Brazos County Courthouse  
300 East 26th Street, Suite 325  
Bryan, Texas 77803

Letter Opinion No. LO97-015

Re: Reconsideration of Attorney General Letter  
Opinion No. 96-060 (1996) and related questions  
(ID# 38863)

Dear Mr. Kuboviak:

You request that this office reconsider its conclusion in Letter Opinion No. 96-060. You also ask several questions about the ramifications of Letter Opinion No. 96-060, should this office determine that the letter opinion's conclusion is correct. We will begin by summarizing our decision in that letter opinion.

Letter Opinion No. 96-060 addressed the authority of the Brazos County district and statutory county court judges to establish a centralized filing system that would permit the county attorney to file with the county clerk a misdemeanor case of which the district court, as well as the statutory county courts, has jurisdiction.<sup>1</sup> We determined that Government Code section 25.0232(g), which designates the district clerk of Brazos County as the clerk of the county and district courts in matters in which the courts share jurisdiction, prevails over Government Code section 74.093(a) and (b). We further concluded that the county's centralized filing system violates Government Code section 25.0232 and that "only the district clerk may accept for filing" the misdemeanor cases about which you asked.<sup>2</sup>

We have reexamined Letter Opinion No. 96-060 in light of the concerns you raise, and we conclude that its conclusion is correct. We therefore affirm our conclusion in Letter Opinion No. 96-060.

Because we affirm our conclusion in Letter Opinion No. 96-060 we proceed to consider your remaining questions. You first ask whether those cases that have been filed with the county clerk, but that should have been filed with the district clerk in accordance with Government Code section 25.0232(g), were properly filed, given that the Texas Supreme Court approved the local rules designating the county clerk to accept for filing misdemeanor cases of which the statutory county courts and the 361st District Court share jurisdiction. Preliminarily, we will address the supreme court's role in approving local rules pertaining to court administration. Under the Court

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<sup>1</sup>Letter Opinion No. 96-060 (1996) at 1.

<sup>2</sup>*Id.* at 2.

Administration Act, Government Code chapter 74, the supreme court has "supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice."<sup>3</sup> Moreover, under the Texas Rules of Civil Procedure, no proposed local rule is effective until the supreme court has approved it.<sup>4</sup> But we do not understand the rule approval process to be an appropriate venue for determining whether Government Code section 74.093 prevails over section 25.0232, particularly where you have not informed us that the supreme court was apprised of the conflict between the two statutes. Accordingly, we believe the court's approval of Brazos County's local rules is in no way equivalent to a judicial decision that Government Code section 74.093 prevails over Government Code section 25.0232, and we decline to reach such a conclusion.

We think the issue you mean to raise is whether, assuming that the cases filed with the county clerk that should have been filed with the district clerk were improperly filed, judgments issued in the cases are valid. In general, a judgment is void only if the court rendering the judgment lacked jurisdiction.<sup>5</sup> In this case, although the cases were filed with the wrong clerk of court, the courts issuing the judgments had jurisdiction over the cases. Consequently, the judgments are not void because they were filed incorrectly. Moreover, we do not believe the judgments are voidable by reason of the improper filing. A voidable judgment is one rendered by a court of competent jurisdiction that appears to be valid but that is, in fact, erroneous or irregular by reason of some latent defect.<sup>6</sup> While the judgments in the cases about which you ask may be irregular because of the improper filing,<sup>7</sup> the filing error pertains simply to the administration of the case; presumably, it does not affect the merits of the case in any way, nor does it render the judgment unfair to any of the parties.<sup>8</sup> Because we must presume a judgment valid where the rendering court had jurisdiction,<sup>9</sup> we conclude that the judgments about which you ask are neither void nor voidable simply because they were improperly filed. This is especially true, we think, where the cases were filed in good-faith reliance upon the supreme court's approval of the local rules of court administration.

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<sup>3</sup>Gov't Code § 74.021.

<sup>4</sup>TEX. R. Crv. P. 3a(3).

<sup>5</sup>47 TEX. JUR. 3D *Judgments* § 70 (1986) (and cases cited therein). A valid and enforceable judgment is supported by three elements: (1) the court has jurisdiction of the parties; (2) the court has jurisdiction of the subject matter; and (3) the court is authorized to make the particular judgment. 46 AM. JUR. 2D *Judgments* § 16 (1994).

<sup>6</sup>47 TEX. JUR. 3D *Judgments* § 71 (1986).

<sup>7</sup>See 46 AM. JUR. 2D *Judgments* § 20 (1994) (stating that judgment is irregular where proper rules of procedure have not been followed or where some necessary act has been done improperly).

<sup>8</sup>See *Autry v. Autry*, 830 S.W.2d 140, 141-42 (Tex. App.--Houston [14th Dist.] 1992, no writ) (quoting BLACK'S LAW DICTIONARY 547 (4th ed. 1968)) (differentiating directory statutes or rules of procedure from mandatory statutes or rules of procedure); 46 AM. JUR. 2D *Judgments* § 20 (1994); cf. 47 TEX. JUR. 3D *Judgments* § 71 (1986) (using as example of voidable judgment one obtained by fraud).

<sup>9</sup>46 AM. JUR. 2D *Judgments* § 34 (1994).

You next ask whether the local judges must revise the local rules to be consistent with Government Code section 25.0232(g) before the county attorney may present the cases for filing in the district clerk's office. The local rules are invalid because they do not comply with the law. Under the law, as we stated in Letter Opinion No. 96-060, cases over which the district court or courts and county courts have concurrent jurisdiction must be filed with the district clerk. Cases must be filed in accordance with the law, regardless of the substance of a local rule. Accordingly, cases must be filed with the district clerk whether or not the local judges revise the local rules to comply with the law.

Your next questions concern what you call "juvenile cases." You specifically ask whether the district clerk must assign juvenile cases to all five of the Brazos County courts because all five courts have juvenile jurisdiction, or whether the Court Administration Act provides local judges the discretion to decide that only county courts will hear juvenile cases. You also ask whether the district clerk is the appropriate clerk for all of the juvenile cases in Brazos County.

You do not delineate what you mean by the phrase "juvenile cases," which causes us some difficulty as we address your questions. In particular, we are uncertain whether you mean family-law cases and proceedings, referred to in Government Code section 25.0232(a), or juvenile matters, referred to in Government Code section 23.001. Government Code section 25.0232(a) provides Brazos County courts at law and district courts with concurrent jurisdiction of family-law cases and proceedings. For purposes of Government Code chapter 25, the phrase "family law cases and proceedings" includes

cases and proceedings involving adoptions, birth records, or removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.<sup>10</sup>

On the other hand, Government Code section 23.001 generally bestows jurisdiction of juvenile matters on each district court or statutory county court. Section 23.001 continues, however, to state that any court with jurisdiction over juvenile matters "may be designated a juvenile court."

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<sup>10</sup>Gov't Code § 25.0002.

Although section 23.001 does not define the phrase "juvenile matters," we believe that it encompasses only "cases involving the delinquent conduct<sup>11</sup> or conduct indicating a need for supervision<sup>12</sup> engaged in by a person who was a child<sup>13</sup> . . . at the time he engaged in the conduct."<sup>14</sup> By stating that any district or statutory county court "may be designated a juvenile court," section 23.001 appears to refer to the Juvenile Justice Code,<sup>15</sup> which applies only to cases involving delinquent conduct and conduct indicating a need for supervision.<sup>16</sup> Under Family Code section 51.04(b), part of the Juvenile Justice Code, the county's juvenile board must designate as "the juvenile court" one or more district or county courts at law (or other listed courts).<sup>17</sup> The juvenile court has "exclusive original jurisdiction" of cases involving delinquent conduct or conduct indicating a need for supervision.<sup>18</sup>

Under Government Code section 23.001 and Family Code section 51.04(a), only that court or courts that the juvenile board designates as the juvenile court has jurisdiction of cases involving delinquent conduct or conduct in need of supervision.<sup>19</sup> Section 23.001's use of the term "jurisdiction" thus refers to the fact that the courts listed there may be designated to have exclusive original jurisdiction under section 51.04.<sup>20</sup> In our opinion, section 23.001 does not authorize all county courts at law and district courts to hear juvenile cases.

Compared with Government Code section 23.001 and Family Code section 51.04(a), pertaining only to cases involving delinquent conduct and conduct in need of supervision, Government Code section 25.0232(a) pertains to a much broader category of cases: family-law cases and proceedings. To the extent section 25.0232(a) encompasses cases involving delinquent conduct

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<sup>11</sup>See Fam. Code § 51.03 (defining "delinquent conduct").

<sup>12</sup>See *id.* § 51.03 (defining "conduct indicating a need for supervision").

<sup>13</sup>For purposes of title 3 of the Family Code, which includes chapter 51, a child is a person who is either between the ages of 10 and 17 years of age or at least 17 years of age and under 18 years of age "who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age." *Id.* § 51.02(2).

<sup>14</sup>*Id.* § 51.04(a) (footnote added).

<sup>15</sup>*Id.* tit. 3. Indeed, the statutory predecessor to section 23.001(a) explicitly referred to Family Code section 51.04. See Act of May 3, 1979, 66th Leg., R.S., ch. 178, § 1, 1979 Tex. Gen. Laws 387, 387-88.

<sup>16</sup>See Fam. Code § 51.04(a).

<sup>17</sup>*Id.* § 51.04(b).

<sup>18</sup>*Id.* § 51.04(a).

<sup>19</sup>You have not informed us which court or courts have been designated as the juvenile court for purposes of the Juvenile Justice Code.

<sup>20</sup>See *G.C.D. v. State*, 577 S.W.2d 302, 303 (Tex. Civ. App.--Beaumont 1978, no writ).

and conduct in need of supervision, we believe section 25.0232(a), like Government Code section 23.001, provides a county court at law or a district court only with the possibility that it may be designated as the juvenile court under Family Law section 51.04; without that designation, the court lacks jurisdiction over cases involving delinquent conduct and conduct in need of supervision. Thus, under section 25.0232(g), the district clerk must accept for filing cases involving delinquent conduct and conduct in need of supervision only if the Brazos County juvenile board has designated a county court at law as well as a district court as the juvenile court. The district clerk must accept for filing all other family law cases because the district courts and county courts at law have concurrent jurisdiction of them.

Accordingly, in answer to your question regarding whether the district clerk is the appropriate clerk for all of the juvenile cases in Brazos County, we must give a two-fold answer. If, by the phrase "juvenile cases," the judge means family-law cases and proceedings, then the district clerk is, consistent with Government Code section 25.0232(g), the appropriate clerk for all of the cases except those involving delinquent conduct or conduct indicating a need for supervision. On the other hand, the district clerk is the appropriate clerk for cases involving delinquent conduct or conduct indicating a need for supervision only if the Brazos County juvenile board has given exclusive original jurisdiction of the cases concurrently to a statutory county court or courts and a district court or courts (or if the juvenile board has granted exclusive original jurisdiction to a district court or courts).

You ask whether the district clerk must assign juvenile cases to all five of the Brazos County courts "because all five courts have juvenile jurisdiction"<sup>21</sup> or whether the selection of county courts alone to hear the juvenile cases falls within the discretion of the local judges under the Court Administration Act's provisions. Again, we are uncertain whether you mean family-law cases or proceedings or cases involving delinquent conduct or conduct indicating a need for supervision. If you mean cases involving delinquent conduct and conduct indicating a need for supervision, then as we have said, under the Juvenile Justice Code (not the Court Administration Act), the Brazos County juvenile board may designate one or more courts to serve as the juvenile court, and only that court or courts has exclusive original jurisdiction over those cases. The clerk of court, be it district or county, may assign those cases only to the designated juvenile court.

If, on the other hand, you use "juvenile cases" as synonymous with family-law cases other than cases involving delinquent conduct and conduct indicating a need for supervision, then Government Code section 25.0232(a)(2)(B) provides Brazos County courts at law and district courts with concurrent jurisdiction.<sup>22</sup> Section 25.0232(g) does not address how the district clerk must assign

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<sup>21</sup>By referring to five Brazos County courts, we assume you mean the three district courts that serve Brazos County plus the two county courts at law.

<sup>22</sup>The constitutional county court of Brazos County has juvenile jurisdiction in accordance with Government Code section 23.001. See Gov't Code §§ 26.042(b), .121. Consequently, it has jurisdiction only over cases involving delinquent conduct and conduct in need of supervision if the county juvenile board designates it as a juvenile court under Family Code section 51.04(b). See Fam. Code § 51.04(c) (stating that if juvenile board designates county court as juvenile court, juvenile board must designate at least one other court as juvenile court). Unless it is designated as the juvenile court, the Brazos

(continued...)

the cases. If under the Court Administration Act the local judges have selected only the statutory county courts to hear family-law cases other than cases involving delinquent conduct and conduct in need of supervision,<sup>23</sup> then the district clerk must assign the cases to only those courts (assuming the local judges' rule is otherwise proper). While local rules may limit the courts to which the clerk may assign family-law cases, we do not read the Court Administration Act to empower district and county court at law judges to limit a court's jurisdiction through the local rules. Government Code section 25.0232(g) premises the district court's duty to accept cases for filing upon the court's jurisdiction. Consequently, the district clerk must accept the cases for filing even if under the local rules family-law cases may be assigned only to county courts at law.<sup>24</sup>

We answer your final question in a similar manner. You ask whether misdemeanor cases still must be filed with the district clerk even if none of the district courts hear the cases. By "none," we understand you to mean the 361st District Court since neither of the other district courts have jurisdiction of misdemeanor cases. As you indicate, until November 1, 1995, the 361st District Court did not hear misdemeanor cases. From the request letter you sent that resulted in Letter Opinion No. 96-060 (1996), we understand that the 361st District Court began accepting misdemeanor cases on November 1, 1995, because "the Brazos County Attorney began for the first time to request regular assignment of a portion of its misdemeanor cases" to that district court. You further informed us that the 361st District Court agreed to accept the cases. You mention nothing about the local rules adopted in accordance with the Court Administration Act; thus, we do not understand that prior to November 1, 1995, the local rules precluded the 361st District Court from accepting misdemeanor cases. Furthermore, as we stated in response to your previous question, the rules district and statutory county court judges adopt under the Court Administration Act may not affect a court's jurisdiction.<sup>25</sup>

Under Government Code section 24.506(b), the district court has jurisdiction of misdemeanor cases. By its terms, Government Code section 25.0232(g) requires the district clerk to act as clerk of court in all cases in which the statutory county courts and district court have concurrent jurisdiction. Accordingly, we conclude that the district clerk must accept for filing all misdemeanor cases even if the 361st District Court does not hear misdemeanor cases in which the statutory county courts and district court have concurrent jurisdiction.

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<sup>22</sup>(...continued)

County constitutional county court appears to have no jurisdiction over family-law cases.

<sup>23</sup>See Gov't Code § 74.093(b)(1).

<sup>24</sup>Cf. Fam. Code § 51.04(a) (providing juvenile court selected by county juvenile board with "exclusive original jurisdiction" over cases involving delinquent conduct or conduct indicating need for supervision); *Miller v. Woods*, 872 S.W.2d 343, 346 (Tex. App.--Beaumont 1994, no writ) (stating that local rules may not confer subject matter jurisdiction upon court otherwise lacking it).

<sup>25</sup>See *supra* note 24 and accompanying text.

**S U M M A R Y**

We affirm our conclusion in Letter Opinion No. 96-060 (1996).

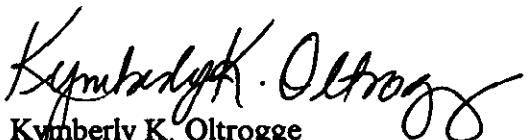
The fact that the Texas Supreme Court approved Brazos County's local rules, adopted in accordance with the Court Administration Act, including a rule that misdemeanor cases over which the statutory county courts share jurisdiction with the 361st District Court must be filed with the county clerk, does not warrant a conclusion that Government Code section 74.093 prevails over Government Code section 25.0232(g). Although misdemeanor cases filed with the county clerk presumably were improperly filed, judgments in the cases are not void or voidable, particularly where the cases were filed in good-faith reliance upon the supreme court's approval of the local rules of court administration.

Misdemeanor cases of which the 361st District Court and statutory county courts have concurrent jurisdiction must be filed with the district clerk whether or not the local district and statutory county court judges revise the local rules of court administration to comply with the law.

Cases involving delinquent conduct or conduct in need of supervision must be filed with the district clerk under Government Code section 25.0232(g) only if the county juvenile board has designated a district court as well as a statutory county court as the juvenile court in Brazos County. The appropriate clerk of court, whether county or district, must assign cases involving delinquent conduct or conduct in need of supervision only to the designated juvenile court. Because statutory county courts and district courts have concurrent jurisdiction of family-law cases other than cases involving delinquent conduct or conduct in need of supervision, Government Code section 25.0232(g) requires the district clerk to accept those cases for filing. The district clerk must assign the cases in accordance with a local rule adopted under the Court Administration Act, if one has been adopted.

The district clerk must accept for filing, under Government Code section 25.0232(g), all cases of which the district and statutory county courts have concurrent jurisdiction.

Yours very truly,

  
Kimberly K. Oltrogge  
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Opinion Committee