MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL.

Attorney General declines to render opinion on 1996 budget bill currently in litigation. Effective July 1, 1996, fee payable to special justices presiding over recommitment hearings and to attorneys representing persons at such hearings is $57.50 and $50, respectively.

The Honorable J.R. Zepkin  
Judge, Ninth Judicial District  

July 30, 1996

Your inquiry concerns the appropriate fee payable to a special justice presiding over a recommitment hearing for a patient hospitalized in a state institution and to an attorney appointed to represent the patient at the hearing.

You interpret § 37.189 of the Code of Virginia to suggest that in all hearings held pursuant to §§ 37.167.1 through 37.167.4, a special justice is to be paid at the rate of fifty-seven dollars and fifty cents, and the attorney is to be paid at the rate of fifty dollars.¹


[n]otwithstanding the provisions of § 37.189, Code of Virginia, special justices appointed to perform the duties of a judge under Title 37.1 shall be compensated at the rate of $28.75 for each preliminary hearing, commitment hearing, certification hearing, or order under a § 37.1134.5 ruling on competency or treatment.²

This limitation in the 1995 Act expired at midnight on June 30, 1996.³ At its 1996 Session, the General Assembly considered House Bill No. 29 to amend the 1995 Act.⁴ One of the provisions of House Bill No. 29 removed the limitation effective the day it was signed by the Governor. House Bill No. 29 became law⁵ without the signature of the Governor pursuant to the provisions of Article V, § 6 of the Constitution of Virginia (1971),⁶ and is presently the subject of litigation in the Supreme Court of Virginia.⁷ For many years, Attorneys General have maintained a policy of declining to render formal opinions when the request pertains directly to a matter currently being litigated.⁸ The rationale for this policy has been, and remains, the reluctance of Attorneys General to interfere with the judicial or administrative forum which actually will be making a decision on the questions which have been posed. This well-established practice is analogous to the declination of the United States Attorney General to render an opinion on a question contemporaneously pending before the courts for determination.⁹ Consequently, I must decline to render an opinion regarding the appropriate fees to be paid for the remainder of the 1994-1996 biennium.

At its 1996 Session, the General Assembly also enacted the Appropriation Act for the 1996-1998 biennium.¹⁰ The General Assembly, however, did not include in that enactment any such limitation as set forth above.¹¹ There is no distinction in the statutory scheme between initial commitment hearings and recommitment hearings conducted under § 37.1-67.3. Therefore, it is unnecessary to resort to any rules of statutory construction since the
language of the applicable statute is unambiguous. Consequently, the statute's plain meaning and intent govern.

It is my opinion, therefore, that, effective July 1, 1996, the fee payable to special justices presiding over recommitment hearings and to attorneys representing persons at those hearings is the same as the fee for those participating in initial commitment hearings—fifty-seven dollars and fifty cents for special justices, and fifty dollars for attorneys.

Section 37.189 provides, in part: "Any special justice as defined in § 37.188 and any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.167.1 through 37.167.4 shall receive a fee of fifty-seven dollars and fifty cents for each commitment hearing and his necessary mileage. Every attorney appointed under § 37.165.1 or §§ 37.167.1 through 37.167.4 shall receive a fee of fifty dollars and his necessary expenses for each commitment hearing." Section 37.188 allows "[t]he chief judge of each judicial circuit [to] appoint one or more special justices" to perform the duties of a judge as required by Title 37.1.


Id. at 1842 (1995 Act appropriating public revenue for two years ending on "thirtieth day of June, 1996").


If the Governor does not act within seven days of presentation to him of a bill that has been passed by both houses of the General Assembly, "it shall become law without his signature." Art. V, § 6(b).

Because a fully enrolled 465page House Bill No. 29 was not presented to the Governor for signature, a Petition for a Writ of Mandamus was filed in the Supreme Court of Virginia pursuant to § 8.01653. See Gilmore v. Landsidle, No. 961014 (filed May 16, 1996).


See id. § 110, Item 21.