

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

07/02/2024

Clerk of the
Appellate Courts

TENNESSEE SUPREME COURT RULE 13

No. ADM2024-00931

ORDER

As part of the FY 2024-2025 budget, the Tennessee General Assembly approved an additional \$8.6 million in recurring funding for the indigent representation program. This additional funding will provide a \$10 increase in the hourly reimbursement rate of attorney compensation, along with a proportionate increase in the current caps on the total amount a court-appointed attorney may earn per case.

Based upon this increased funding, the Court has determined that it is appropriate to amend Tennessee Supreme Court Rule 13, sections 2 and 3.

Accordingly, the Court hereby amends Rule 13 as set out in the Appendix to this Order. These amendments shall be effective July 1, 2024. The Clerk shall provide a copy of this Order to LexisNexis and to Thomson Reuters. In addition, this Order shall be posted on the Tennessee Supreme Court's website. This Order is deemed to be filed *nunc pro tunc* to July 1, 2024.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

***AMENDMENT TO TENNESSEE SUPREME COURT RULE RULE 13,
SECTIONS 2 AND 3***

**[Deleted text is indicated by overstriking,
and new text is indicated by underlining.]**

Sup.Ct.Rules, Rule 13

Rule 13. Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants

Effective: July 1, 2024

Currentness

Section 2. Compensation of counsel in non-capital cases.

(a)(1) Appointed counsel, other than public defenders, shall be entitled to reasonable compensation for services rendered as provided in this rule. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations in this rule, which limitations are declared to be reasonable.

(2) These limitations apply to compensation for services rendered in each court: municipal, juvenile, or general sessions; criminal, circuit, or chancery; Court of Appeals or Court of Criminal Appeals; Tennessee Supreme Court; and United States Supreme Court.

(b) Co-counsel or associate attorneys in non-capital cases shall not be compensated.

(c) The hourly rate for appointed counsel in non-capital cases shall not exceed ~~sixty~~~~five~~ dollars (~~\$6050~~) per hour for time reasonably spent preparing the case and time reasonably spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

(d)(1) The maximum compensation allowed shall be determined by the original charge or allegations in the case. Except as provided in section 2(e), the compensation allowed appointed counsel for services rendered in a non-capital case shall not exceed the following amounts:

(2) ~~Six~~~~Five~~ ~~H~~undred ~~D~~ollars (~~\$600500~~) for:

(A) Contempt of court cases where an adult or a juvenile is in jeopardy of incarceration;

(B) Parole revocation proceedings pursuant to the authority of state and/or federal law;

(C) Judicial proceedings under Tennessee Code Annotated, Title 33, Chapters 3 through 8, Mental Health Law;

(D) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tennessee Code Annotated, Title 34;

(E) Cases under [Tennessee Code Annotated section 37-10-304](#) and [Tennessee Supreme Court Rule 24](#), relative to petitions for waiver of parental consent for abortions by minors;

(F) Cases alleging unruly conduct of a child which place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b); and

(G) Guardian ad litem representation for the child or children in adoption cases in accordance with section 1(d)(2)(F). Pursuant to Public Chapter 409 of the 111th General Assembly, there is a rebuttable presumption that the guardian ad litem's fees shall be divided equally between the parties, excluding the person being adopted.

(3) One thousand ~~two hundred~~ dollars (~~\$1,200~~,~~000~~) for:

(A) Cases in which an adult or a juvenile is charged with a misdemeanor and is in jeopardy of incarceration;

(B) Direct and interlocutory appeals in the Court of Appeals or Court of Criminal Appeals;

(C) Direct and interlocutory appeals in the Tennessee Supreme Court;

(D) Cases in which a defendant is applying for early release from incarceration or a suspended sentence;

(E) Non-capital post-conviction and habeas corpus proceedings;

(F) Probation revocation proceedings;

(G) All other non-capital cases in which the indigent party has a statutory or constitutional right to be represented by counsel.

(4) One thousand ~~eightfive~~ hundred dollars (~~\$1,800~~,~~500~~) for:

(A) Preliminary hearings in general sessions and municipal courts in which an adult is charged with a felony;

(B) Cases in which a juvenile is charged with a non-capital felony;

(5)(A) Two thousand four hundred dollars (~~\$2,4002,000~~) for cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony;

(B) Three thousand six hundred dollars (~~\$3,6003,000~~) for cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony;

(6) Maximum compensation for juvenile dependency and neglect proceedings and termination of parental rights proceedings is as follows:

(A) One thousand two hundred dollars (~~\$1,2001000~~) for:

(i) Dependent or neglected child cases, from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under [Tennessee Code Annotated sections 37-1-401 through 37-1-411](#), from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings; and

(iii) Counsel appointed pursuant to [Tennessee Supreme Court Rule 40\(e\)\(2\)](#) and in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under [Tennessee Code Annotated sections 37-1-401 through 37-1-411](#), from the filing of the dependency petition through the dispositional hearing, including the preliminary hearing, ratification of the initial permanency plan, adjudicatory and dispositional hearings;

(B) One Thousand, ~~five~~Two Hundred ~~Fifty D~~ollars (~~\$1,5001,250~~) for:

(i) Dependent or neglected child cases, for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews and permanency hearings;

(ii) Guardian ad litem representation in accordance with section 1(d)(2)(C) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under [Tennessee Code Annotated sections 37-1-401 through 37-1-411](#), for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings; and

(iii) Counsel appointed pursuant to [Tennessee Supreme Court Rule 40\(e\)\(2\)](#) and in accordance with section 1(d)(2)(D) for a child or sibling group who is or may be the subject of a report of abuse or neglect or an investigation report under [Tennessee Code Annotated sections 37-1-401 through 37-1-411](#), for all post-dispositional proceedings, including foster care review board hearings, post-dispositional court reviews, and permanency hearings.

(C) One thousand, ~~five Two H~~undred ~~Fifty~~ dollars (~~\$1,500+250~~) for:

- (i) Proceedings against parents in which allegations against the parents could result in termination of parental rights;
- (ii) Guardian ad litem representation in termination of parental rights cases in accordance with section 1(d)(2)(D); and
- (iii) Counsel appointed pursuant to [Tennessee Supreme Court Rule 40\(e\)\(2\)](#) and in accordance with section 1(d)(2)(C) for a child or sibling group in termination of parental rights cases;

(e)(1) Notwithstanding the provisions of section (2)(d), an amount in excess of the maximum, subject to the limitations of section (2)(e)(3), may be sought by filing a motion in the court in which representation is provided. The motion shall include specific factual allegations demonstrating that the case is complex or extended. The court shall enter an order which evidences the action taken on the motion. The following, while neither controlling nor exclusive, indicate the character of reasons that may support a complex or extended certification:

(A) The case involved complex scientific evidence and/or expert testimony;

(B) The case involved multiple defendants and/or numerous witnesses;

(C) The case involved multiple protracted hearings;

(D) The case involved novel and complex legal issues.

(E) If the motion is granted, an order shall be forwarded to the Director of the AOC (herein “director”) certifying the case as complex or extended. The order shall either recite the specific facts supporting the finding or incorporate by reference and attach the motion which includes the specific facts supporting the finding. To qualify for payment under this section, the order certifying the claim as extended or complex must be signed contemporaneously with the court’s approval of the claim. *Nunc pro tunc* certification orders are not sufficient to support payment under this section.

(2) All payments under section 2(e)(1) must be submitted to the director for approval. If a payment under section 2(e)(1) is not approved by the director, the director shall transmit the claim to the chief justice for disposition. The determination of the chief justice shall be final.

(3) Upon approval of the complex or extended claim by the director or the chief justice, the following maximum amounts apply:

(A) One thousand ~~two hundred~~ dollars (~~\$1,200+000~~) in those categories of cases where the maximum compensation is otherwise ~~six five~~ hundred dollars (~~\$600500~~);

(B) Except as provided in section (2)(e)(3)(D), two thousand four hundred dollars (~~\$2,4002,000~~) in those categories of cases where the maximum compensation is otherwise one thousand two hundred dollars (~~\$1,2004,000~~);

(C) ~~ThreeTwo~~ thousand five hundred dollars (~~\$3,0002,500~~) in those categories of cases where the maximum compensation is otherwise one thousand five two hundred fifty dollars (~~\$1,5004,250~~).

(D) Three thousand six hundred dollars (\$3,600) in those categories of cases where the maximum compensation is otherwise one thousand eight hundred dollars (\$1,800).

~~(E)~~ Four thousand eight hundred dollars (~~\$4,8004,000~~) in cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony; and

~~(F)~~ ~~SevenSix~~ thousand two hundred dollars (~~\$7,2006,000~~) in cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony. Where the felony charged is first-degree murder, the director may waive the ~~sevensix~~ thousand two hundred dollar (~~\$7,2006,000~~) maximum if the order demonstrates that extraordinary circumstances exist and failure to waive the maximum would result in undue hardship.

(f) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document.

(g) Counsel appointed or assigned to represent indigents shall not be paid for any time billed in excess of 2,000 hours per calendar year unless, in the opinion of the Administrative Director, an attorney has made reasonable efforts to comply with this limitation, but has been unable to do so, in whole or in part, due to the attorney's representation pursuant to Section 3 of this Rule. It is the responsibility of private counsel to manage their billable hours in compliance with the annual maximum.

EXPLANATORY COMMENT:

Section 2(b) unequivocally provides that only one attorney will be compensated in non-capital cases. Section 2(c) clarifies that appointed counsel will not be compensated for time spent on Board of Professional Responsibility complaints arising from appointments. Section 2(d) has been reorganized for simplicity and clarity. Compensation rates for counsel appointed in juvenile, dependency and neglect, and termination of parental rights cases are now contained in Section 2(d)(6). Section 2(d)(6) further defines the dispositional and post-dispositional phases at which compensation is appropriate and also compensates attorneys appointed pursuant to [Tennessee Supreme Court Rule 40\(e\)\(2\)](#). Section 2(d)(2)(G) has been added pursuant to Public Chapter 409 of the 111th General Assembly. A claim in an adoption proceeding is separate from a claim in a termination of parental rights proceeding, even if the court appoints the same guardian ad litem in the adoption proceeding. Section 2(e)(1) further delineates the procedure and factors supporting certification of a case as complex or extended, including the mandatory requirement that the order certifying the claim be submitted to the AOC contemporaneously with the claim requesting complex or extended compensation. Section 2(e)(2) reiterates that approval of the director or the chief justice is required and that the determination of the chief justice is final. Section 6 of this rule sets out in more detail the claims review process. Section 2(e)(3)(A)-(D) has been revised to simplify and clarify the language. Section 2(e)(3)(D) has been revised to limit waiver of the \$4,000 maximum to first-degree murder cases, rather than all homicide cases. Section 2(f) precludes compensating attorneys for time spent traveling to and from a clerk's office in another county for the sole purpose of hand-delivering or filing documents.

Section 3. Minimum qualifications and compensation of counsel in capital cases.

(a) For purposes of this rule, a capital case is a case in which a defendant has been charged with first-degree murder and a notice of intent to seek the death penalty, as provided in [Tennessee Code Annotated section 39-13-208](#) and [Tennessee Rule of Criminal Procedure 12.3\(b\)](#), has been filed and no order withdrawing the notice has been filed. Non-capital compensation rates apply to services rendered by appointed counsel after the date the notice of intent to seek the death penalty is withdrawn.

(b)(1) The court shall appoint two attorneys to represent a defendant at trial in a capital case. Both attorneys appointed must be licensed in Tennessee and have significant experience in Tennessee criminal trial practice, unless in the sound discretion of the trial court, appointment of one attorney admitted under [Tennessee Supreme Court Rule 19](#) is appropriate. The appointment order shall specify which attorney is “lead counsel” and which attorney is “co-counsel.” Whenever possible, a public defender shall serve as and be designated “lead counsel.”

(2) If the notice of intent to seek the death penalty is withdrawn at least thirty (30) days prior to trial, the trial court shall enter an order relieving one of the attorneys previously appointed. In these circumstances, the trial court may grant the defendant, upon motion, a reasonable continuance of the trial.

(3) If the notice is withdrawn less than thirty (30) days prior to trial, the trial court may either enter an order authorizing the two attorneys previously appointed to remain on the case for the duration of the present trial, or enter an order relieving one of the attorneys previously appointed and granting the defendant, upon motion, a reasonable continuance of the trial.

(c) Lead counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice *pro hac vice*;

(2) have regularly participated in criminal jury trials for at least five years;

(3) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(4) have at least one of the following:

(A) experience as lead counsel in the jury trial of at least one capital case;

(B) experience as co-counsel in the trial of at least two capital cases;

(C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one murder case;

(D) experience as lead counsel or sole counsel in at least three murder jury trials or one murder jury trial and three felony jury trials; or

(E) experience as a judge in the jury trial of at least one capital case.

(5) The provisions of this subsection requiring lead counsel to have participated in criminal jury trials for at least five years, rather than three years, and requiring six (6) hours of specialized training shall become effective January 1, 2006.

(d) Co-counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice *pro hac vice*;

(2) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(3) have at least one of the following qualifications:

(A) qualify as lead counsel under (c) above; or

(B) have experience as sole counsel, lead counsel, or co-counsel in a murder jury trial.

(4) The provisions of this subsection requiring six (6) hours of specialized training shall become effective January 1, 2006.

(e) Attorneys who represent the defendant in the trial court in a capital case may be designated to represent the defendant on direct appeal, provided at least one trial attorney qualifies as new appellate counsel under section 3(g) of this rule and both attorneys are available for appointment. However, new counsel will be appointed to represent the defendant if the trial court, or the court in which the case is pending, determines that appointment of new counsel is necessary to provide the defendant with effective assistance of counsel or that the best interest of the defendant requires appointment of new counsel.

(f) If new counsel are appointed to represent the defendant on direct appeal, both attorneys appointed must be licensed in Tennessee, unless in the sound discretion of the judge, appointment of one attorney admitted under [Tennessee Supreme Court Rule 19](#) is appropriate.

(g) Appointed counsel on direct appeal, regardless of any prior representation of the defendant, must have three years of litigation experience in criminal trials and appeals, and they must have at least one of the two following requirements: experience as counsel of record in the appeal of a capital case; or experience as counsel of record in the appeal of at least three felony convictions within the past three years and a minimum of six hours of specialized training in the trial and appeal of capital cases.

(h) Counsel eligible to be appointed as post-conviction counsel in capital cases must have the same qualifications as appointed appellate counsel, or have trial and appellate experience as counsel of record in state post-conviction proceedings in three felony cases, two homicide cases, or one capital case. Counsel also must have a working knowledge of federal *habeas corpus* practice, which may be satisfied by six hours of specialized training in the representation in federal courts of defendants under the sentence of death imposed in state courts; and they must not have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made, unless the defendant and counsel expressly consent to continued representation.

(i) No more than two attorneys shall be appointed to represent a death-row inmate in a proceeding regarding competency for execution. See *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999). At least one of the attorneys appointed shall be qualified as post-conviction counsel as set forth in section 3(h).

(j) Appointed counsel in capital cases, other than public defenders, shall be entitled to reasonable compensation as determined by the court in which such services are rendered, subject to the limitations of this rule, which limitations are declared to be reasonable. Compensation shall be limited to the two attorneys actually appointed in the case. Appointed counsel in a capital case shall submit claims in accordance with Section 6 of this rule.

(k) Hourly rates for appointed counsel in capital cases shall be as follows:

(1) Lead counsel (\$~~110400~~);

(2) Co-counsel (\$~~9080~~);

(3) Post-conviction counsel (\$~~9080~~);

(4) Counsel appointed pursuant to section 3(i) (\$~~9080~~)

(l) For purposes of this rule, the hourly rate includes time reasonably spent preparing the case and time reasonably spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

(m) Attorneys shall not be compensated for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document.

EXPLANATORY COMMENT:

Section 3(a) clarifies that even if a trial court allows two appointed attorneys to remain on a case, under Section 3(b)(3), after a notice of intent to seek the death penalty is withdrawn, counsel will be compensated at non-capital rates for services rendered after the date the notice is withdrawn. Section 3(b)(1) has been revised to require that the appointment order must specify lead and co-counsel and that the public defender must serve and be designated lead counsel whenever possible. Section 3(b)(2) & (3) previously appeared as Section 3(l) of Rule 13. Section 3 now permits former prosecutors and judges with appropriate experience to be appointed counsel in capital cases. Section 3(c)(2) has been revised to require five years participation in criminal jury trials, rather than three years representation of defendants in criminal jury trials. Section 3(c)(3) has been revised to enhance the educational requirements for appointed counsel. Section 3(c)(4)(E) has been revised to include an experience requirement applicable only to former judges. Section 3(i) has been revised to clarify that its scope is limited to affording compensation to appointed counsel in a proceeding challenging the inmate's competency to be executed. Section 3(k)(7) provides that attorneys appointed in competency proceedings will be compensated at the same \$80 rate applicable in other capital post-conviction proceedings. Section 3(l) clarifies that appointed counsel will not be compensated for time spent defending against a Board of Professional Responsibility action that arises from the appointment. Section 3(m) precludes compensating attorneys for time spent driving to and from a clerk's office in another