

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

03/07/2024

Clerk of the
Appellate Courts

IN RE: REVISIONS TO TENNESSEE SUPREME COURT RULE 13

No. ADM2024-00227

ORDER

The Administrative Office of the Courts proposes revisions to Tennessee Supreme Court Rule 13. The proposed revisions do not include any adjustments to the compensation rates and/or caps. Any such proposed revisions will come at a later date. The proposed revisions are set out in the attached Appendix to this Order.

The Court hereby publishes the proposed revisions for public comment and solicits written comments on the proposed revisions from judges, lawyers, bar associations, members of the public, and all interested parties. The deadline for submitting written comments is May 6, 2024 (60 days). Written comments should reference the docket number above and may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James Hivner, Clerk
RE: Tennessee Supreme Court Rule 13
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this Order and Appendix to Lexis Nexis and to Thomson Reuters. In addition, this Order and Appendix shall be posted on the Tennessee Supreme Court's website.

It is so ORDERED.

PER CURIAM

APPENDIX

***PROPOSED AMENDMENTS TO TENNESSEE SUPREME COURT
RULE 13***

(new text indicated by underlining; deleted text indicated by overstriking)

Tennessee Supreme Court Rules, Rule 13

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

Effective: October 26, 2021

[Currentness](#)

Section 1. Right to counsel and procedure for appointment of counsel.

(a)(1) The purposes of this rule are:

(A) to provide for the appointment of counsel in all proceedings in which an indigent party has a statutory or constitutional right to appointed counsel;

(B) to provide for compensation of appointed counsel in non-capital cases;

(C) to establish qualifications and provide for compensation of appointed counsel in capital cases, including capital post-conviction proceedings;

(D) to provide for payment of expenses incident to appointed counsel's representation;

(E) to provide for the appointment and compensation of experts, investigators, and other support services for indigent parties in criminal cases, parental rights termination proceedings, dependency and neglect proceedings, delinquency proceedings, and capital post-conviction proceedings;

(F) to establish procedures for review of claims for compensation and reimbursement of expenses; and

(G) to meet the standards set forth in Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996.

(2) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

(3) References herein to the Administrative Director of the Courts (“director”) also encompasses his or her designee(s).

(b) Each general sessions, juvenile, trial and appellate court ~~trial court exercising criminal jurisdiction~~ shall maintain a roster of attorneys from which appointments will be made. However, a court may appoint attorneys whose names are not on the roster if necessary to obtain competent counsel according to the provisions of this rule.

(c) All general sessions, juvenile, trial, and appellate courts shall appoint counsel to represent indigent defendants and other parties who have a constitutional or statutory right to representation (herein “indigent party” or “defendant”) according to the procedures and standards set forth in this rule.

(d)(1) **Covered Cases:** In the following cases, and in all other cases required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and requests appointment of counsel.

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

(B) Contempt of court proceedings in which the defendant is in jeopardy of incarceration;

(C) Proceedings initiated by a petition for *habeas corpus*, early release from incarceration, suspended sentence, or probation revocation;

(D) Proceedings initiated by a petition for post-conviction relief, subject to the provisions of Tenn. Sup. Ct. R. Tennessee Supreme Court Rule 28 and Tenn. Code Ann. §§Tennessee Code Annotated sections 40-30-101 et seq.;

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

(F) Judicial proceedings under Tenn.essee Code Ann.otated, Title 33, Chapters 3 through 8, Mental Health Law;

(G) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tenn.essee Code Ann.otated, Title 34;

(H) Cases under Tenn.essee Code Ann.otated § 37-10-304 and Tenn.essee-Sup,reme Court, R,ule 24, relative to petitions for waiver of parental consent for abortions by minors; and

(I) Proceedings initiated pursuant to Tenn. R. Crim. P. 36.1 and in which the trial court, pursuant to Tenn. R. Crim. P. 36.1(b), has determined that the motion states a colorable claim for relief.

(2) **Covered Proceedings:** In the following proceedings, and in all other proceedings where required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and, except as provided in (C), (D), and (F) below, requests appointment of counsel.

(A) Cases in which a juvenile is charged with juvenile delinquency for committing an act which would be a misdemeanor or a felony if committed by an adult;

(B) Cases under Tenn. Code Ann. Titles 36 and 37 of the ~~Tennessee Code Annotated~~ involving allegations against parents who have a constitutional right to counsel and whose parental rights could be in jeopardy from a -that could result in finding a child is dependent or neglected or in terminating parental rights;

(C) Reports of abuse or neglect or investigation reports under Tenn.essee Code Ann.otated §§ 37-1-401 through 37-1-411.

(i) The court shall appoint a guardian ad litem for every child who is or may be the subject of such report. The appointment of the guardian ad litem shall be made upon the filing of the petition or upon the court's own motion, based upon knowledge or reasonable belief that the child may have been abused or neglected. The child who is or may be the subject of a report or investigation of abuse or neglect shall not be required to request appointment of counsel.

(ii) A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian. For purposes of this subsection, the compensation limits established in section 2 apply to each guardian ad litem appointed rather than to each child.

(iii) If the court finds the child's parents, legal custodians, or guardians are financially able to defray a portion or all of the cost of the guardian ad litem, the court shall enter an order directing the child's parents, legal custodians, or guardians to pay into the registry of the clerk of the court any sum that the court determines the child's parents, legal custodians, or guardians are able to pay.

(iv) The sum to defray a portion or all of the costs shall be subject to execution as any other judgment. The court may provide for payments to be made at intervals, which the court shall establish, and upon terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances.

(v) If the Administrative Office of the Courts (“AOC”) receives funds greater than the total amount which appointed guardian ad litem has claimed and has been reimbursed pursuant to Tenn. Sup. Ct. R. 13, then any such excess funds shall be paid to the attorney appointed as guardian ad litem.

(D) Proceedings to terminate parental rights.

(i) The court shall appoint a guardian ad litem for the child, unless the termination is uncontested. The child who is or may be the subject of proceedings to terminate parental rights shall not be required to request appointment of counsel. A single guardian ad litem shall be appointed to represent an entire sibling group unless the court finds that conflicting interests require the appointment of more than one guardian.

(ii) If the court finds the child's parents, legal custodians, or guardians are financially able to defray a portion or all of the cost of the guardian ad litem, the court shall enter an order directing the child's parents, legal custodians, or guardians to pay into the registry of the clerk of the court any sum that the court determines the child's parents, legal custodians, or guardians are able to pay.

(iii) The sum to defray a portion or all of the costs shall be subject to execution as any other judgment. The court may provide for payments to be made at intervals, which the court shall establish, and upon terms and conditions as are fair and just. The court may also modify its order when there has been a change in circumstances.

(iv) If the AOC receives funds greater than the total amount which appointed guardian ad litem has claimed and has been reimbursed pursuant to Tenn. Sup. Ct. R. 13, then any such excess funds shall be paid to the attorney appointed as guardian ad litem.

(v) For purposes of this subsection, the compensation limits established in section 2 apply to each guardian ad litem appointed rather than to each child.

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

(F) Adoption proceedings in which the court appoints a guardian ad litem for the child or children pursuant to Tenn. Code Ann. § 36-1-146~~Public Chapter 409 of the 111th General Assembly~~.

(e)(1) Except in cases under Sections 1(d)(1)(F) proceedings under the mental health law, 1(d)(1)(G) proceedings for guardianship under Tenn. Code Ann. Title 34, and 1(d)(2)(A) juvenile delinquency proceedings, whenever a party to any case in section 1(d) requests the appointment of counsel, the party shall be required to complete and submit to the court an Affidavit of Indigency Form provided by the ~~Administrative Office of the Courts, herein "AOC"~~.

(2) Upon inquiry, the court shall make a finding as to the indigency of the party, including whether the party has the financial ability to defray a portion or all of the costs of representation pursuant to the provisions of ~~Tenn. Code Ann. § 40-14-202~~, which finding shall be evidenced by a court order.

(3) Upon finding a party indigent, the court shall enter an order appointing counsel. ~~If unless~~ the indigent party rejects the offer of appointment of counsel with an understanding of the legal consequences of the rejection, the court shall enter an order stating the indigent party refused representation.

(4)(A) When appointing counsel for an indigent defendant pursuant to section 1(e)(3), the court shall appoint the district public defender's office, the state post-conviction defender's office, or other attorneys employed by the state for indigent defense (herein "public defender") if qualified pursuant to this rule and no conflict of interest exists, unless in the sound discretion of the trial judge appointment of other counsel is necessary. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. § 8-14-201 et seq.

(B) If a conflict of interest exists as provided in Tennessee Rules of Professional Conduct 1.7 or the public defender is not qualified pursuant to this rule, the court shall designate counsel from the roster of private attorneys maintained pursuant to section 1(b).

(C) The court shall appoint separate counsel for indigent defendants having interests that cannot be represented properly by the same counsel or when other good cause is shown.

(D) The court shall not make an appointment if counsel makes a clear and convincing showing that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.

(E) When the court appoints counsel pursuant to this subsection, the order of appointment shall assess the non-refundable administrative fee provided by ~~Tenn. Code Ann. § 37-1-126(c)(1)~~ or ~~section § 40-14-103(b)(1)~~. Additionally the court shall consider the financial ability of the indigent party to defray a portion or all of the cost for representation by the public defender or a portion or all of the costs associated with the provision of court appointed counsel as provided by ~~Tenn. Code Ann. §§ 8-14-205(d)(1); 37-1-126(c)(2); or; 40-14-103(b)(2)~~. If the court finds the indigent party is financially able to defray a portion or all the cost of the indigent party's representation, the court shall enter an order directing the indigent party to pay into the registry of the clerk of such court such sum as the court determines the indigent party is able to pay as specified by ~~Tenn. Code Ann. § 40-14-202(e)~~.

(5) Appointed counsel shall continue to represent an indigent party throughout the proceedings, including any appeals, until the case has been concluded or counsel has been allowed to withdraw by a court. See Tenn. Sup. Ct. R. 14 (setting out the procedure for withdrawal in the Court of Appeals and Court of Criminal Appeals); Tenn. Sup. Ct. R. 8, RPC 1.16.

(f)(1) Indigent parties shall not have the right to select appointed counsel. If an indigent party refuses to accept the services of appointed counsel, such refusal shall be in writing and shall be signed by the indigent party in the presence of the court.

(2) The court shall acknowledge thereon the signature of the indigent party and make the written refusal a part of the record in the case. In addition, the court shall satisfy all other applicable constitutional and procedural requirements relating to waiver of the right to counsel. The indigent party may act pro se without the assistance or presence of counsel only after the court has fulfilled all lawful obligations relating to waiver of the right to counsel.

EXPLANATORY COMMENT:

Section 1(d)(2)(F) has been added pursuant to ~~Tenn. Code Ann. § 36-1-146~~ Public Chapter 409 of the 111th General Assembly. ~~Section 1(e)(1) has been revised for simplicity and organization.~~ Section 1(e)(2) emphasizes that the finding of indigency must be evidenced by a court order. Section 1(e)(4)(A) ~~is stricter than the former rule and~~ emphasizes that trial courts “shall” appoint the public defender to represent

criminal defendants unless a conflict of interest exists or in the sound discretion of the trial court, appointment of another counsel is necessary. Section 1(e)(4)(D) includes a specific standard that must be satisfied before counsel may refuse an appointment. Section 1(e)(4)(E) emphasizes that courts have a statutory duty to assess the administrative fee when appointing counsel as well as a statutory duty to consider whether the indigent party can afford to defray a portion or all of the costs of representation. Section 1(e)(5) clarifies that appointed counsel is obligated to represent the indigent party until the case is concluded, including all appeals, or until a court allows counsel to withdraw. Section 1(f) delineates the rights of indigent parties and the obligations of courts when an indigent party chooses to proceed without counsel.

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 that are directly related to the representation of a party 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) **Hourly Rate:** The hourly rate for appointed counsel in non-capital cases shall not exceed fifty dollars (\$50) 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) **Maximum Compensation Allowed:**

(1) The maximum compensation allowed shall be determined by the original or highest class of felony or misdemeanor 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) Five ~~h~~Hundred ~~d~~Dollars (\$500) ~~-~~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 Tenn. Code Ann., 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, Tenn. Code Ann., Title 34;

(E) Cases under Tenn. Code Ann. § 37-10-304 and Tenn. 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 Tenn. Code Ann. § 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 Tenn. Code Ann. § 36-1-146~~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 dollars (\$1,000) 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 five hundred dollars (\$1,500) 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 dollars (\$2,000) 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 dollars (\$3,000) 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 dollars (\$1,000) 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 two hundred fifty dollars (\$1,250) 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 two hundred fifty dollars (\$1,250) 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) **Case Designated Complex or Extended:**

(1) Notwithstanding the provisions of section (2)(d), an amount in excess of the maximum, subject to the limitations of section (2)(e)(43), 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. **Conclusory allegations or assertions are not sufficient.** 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; **and/or**

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

~~(2E)~~ 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 prior to or contemporaneously with the court's approval of the claim entered in the AOC's electronic filing system. *Nunc pro tunc* certification orders are not sufficient to support payment under this section. Orders filed after the court's approval of the claim shall be deemed waived and will not be reviewed.

(3) Review of Complex or Extended Order: Orders under section 2(e)(1) are subject to review and, giving due consideration to state revenues, approval by the director. If an order is not approved by the director, counsel submitting the order may request review by the chief justice. Such request must be in writing and received by the director or the director's designee within ten (10) business days from the date of the notice of denial. On timely receipt of the request for review, the director shall transmit the claim to the chief justice for disposition. Requests that are not timely submitted will be deemed waived. Review by the chief justice is solely limited to the factual allegations contained in the motion and/or order. The determination of the chief justice is final. All payments under section 2(e)(1) are subject to the provisions of Sec. 6.

~~(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.~~

(43) Maximum Compensation Allowed After Finding of Complex or Extended: Upon approval of the complex or extended claim by the director or the chief justice, the following maximum amounts apply:

(A) One thousand dollars (\$1,000) ~~in~~ those categories of cases where the maximum compensation is otherwise five hundred dollars (\$500);

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

(C) Two thousand five hundred dollars (\$2,500) ~~in~~ those categories of cases where the maximum compensation is otherwise one thousand two hundred fifty dollars (\$1,250).

(D) Four thousand dollars (\$4,000) ~~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

(E) Six thousand dollars (\$6,000) ~~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 six thousand dollars (\$6,000) ~~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 D~~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 ~~Tenn. Code Ann. § 36-1-146 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)(32) provides for a review of the decision of the director by the chief justice if a written request is received by the AOC from the claimant within 10 days of the notice of the denial. This is one of the three decisions of the director that upon timely request can be reviewed by the chief justice as noted in sec. 6(B)(4). 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 the claim review process 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 Ann. stated § 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 ~~murder~~~~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: one hundred dollars (\$100);

(2) Co-counsel: eighty dollars (\$80);

(3) Post-conviction counsel: eighty dollars (\$80);

(4) Counsel appointed pursuant to section 3(i): eighty dollars (\$80)

(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(1) 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 county.

Section 4. Payment of expenses incident to representation.

(a)(1) Appointed counsel, experts, and investigators may be reimbursed for certain necessary expenses directly related to the representation of indigent parties.

(2) The services or time of a paralegal, law clerk, secretary, legal assistant, or other administrative assistants shall not be reimbursed. Normal overhead expenses also shall not be reimbursed.

(3) **Prior Approval Not Required:** The following expenses will be reimbursed without prior approval if reasonably necessary to the representation of the indigent party:

~~(A) Long distance telephone charges, if supported by a log showing the date of the call, the person or office called, the purpose of the call, and the duration of the call stated in one-tenth (1/10) hour segments;~~

~~(AB) Mileage for travel within the state in accordance with Judicial Department travel regulations, if supported by a log showing the mileage, the purpose of the travel, and the origination and destination cities;~~

~~(BC) Lodging where an overnight stay is required at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates as published by the Tennessee Department of Finance and Administration for in-state and out-of-state travel;~~

~~For in-state rates:~~

~~www.state.tn.us/finance/act/travel.html~~

~~For out-of-state rates:~~

~~www.state.tn.us/finance/act/policy.html~~

~~(CD) Meals in accordance with the Judicial Department travel regulations per diem rates if supported by a receipt, where an overnight stay is required;~~

~~(DE) Parking at actual costs up to twentyten dollars (\$20) per day if supported by a receipt;~~

(~~EF~~) *Photocopying--Black and White Copies--*

- (i) In-house copying at a rate not to exceed seven cents (\$0.07) per page;
- (ii) Actual cost of outsourced copying if supported by a receipt, at a rate not to exceed ten cents (\$0.10) per page;
- (iii) Actual cost of providing to client a copy of appellate briefs and opinion.
- (iv) The cost of providing to the indigent party a copy of the court file or transcript will not be reimbursed once the appeal is complete because the original file and transcript belong to the client.
- (v) Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed five hundred dollars (\$500).

(~~FG~~) *Photocopying--Color Copies--*

- (i) In-house color copying at a rate not to exceed one dollar (\$1.00) per page;
- (ii) Actual cost of outsourced color copies at a rate not to exceed one dollar (\$1.00) per page if supported by a receipt;
- (iii) Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total copying costs will exceed five hundred dollars (\$500).

(~~HG~~) *Computerized Research* at actual cost for case-related legal and internet research if supported by receipts. If actual costs are not incurred, compensation will be limited to time spent conducting the search. Pro rata cost of subscription[s] will not be paid.

(~~HI~~) *Miscellaneous expenses*. Miscellaneous expenses, excluding normal overhead expenses in 4(a)(2), which total less than five hundred dollars (\$500) in the aggregate, and are permitted by policy as set by the director, such as postage, commercial delivery service having computer tracking capacity, film, or printing will be compensated at actual cost, not to exceed the fair and reasonable market value, if accompanied by a receipt. Miscellaneous expenses include, but are not limited to, items such as postage, commercial delivery service, film, memory devices required for electronic discovery and medical records. Receipt for in-house postage may be waived as permitted by policy set by the director. Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total miscellaneous expenses will exceed five hundred dollars (\$500)~~250~~.

(I) Expenses relating to improving the indigent party's appearance, including, but not limited to, expenses for dental plates, haircuts, clothing and cleaning charges for clothing, are not reimbursable.

(JK) *Appellate Record*--Actual expenses for an electronic copy of the appellate record (excluding exhibits) and of any transcripts on appeal purchased from the Appellate Court Clerk's Office, not to exceed two hundred dollars (-\$200)100.00.

(b) **Prior Approval Required:** Expenses not listed in section 4(a), ~~including such as expenses related to court reporter fees for recording, transcribing, copying and making appearances; and~~ travel outside the state by appointed counsel, will be reimbursed only if prior authorization is obtained from the court in which the representation is rendered and prior approval is obtained from the director.

(1) Authorization of expenses shall be sought by motion to the court.

(2) The motion shall include both an itemized statement of the estimated or anticipated costs and specific factual allegations demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party.

(3) The court shall enter an order that evidences the action taken on the motion. If the motion is granted, the order shall either recite the specific facts demonstrating that the expenses are directly related to and necessary for the effective representation of the indigent party or incorporate by reference and attach the defense motion that includes the specific facts demonstrating that finding.

(4) The order and any attachments shall be submitted to the director for prior approval before any expenses are incurred.

(c) The director is hereby authorized to reimburse the Department of Children's Services at the Judicial Department rate for the expense of transcripts in termination of parental rights appeals without obtaining prior approval by court order in each case.

(d) Foreign Language Interpreters and Translators. The appointment of interpreters and/or translators, and the compensation by the AOC for costs associated with an interpreter's and/or translator's services, are governed by Tenn. Sup. Ct. R. Rule 42, ~~Rules of the Tennessee Supreme Court~~.

EXPLANATORY COMMENT:

Section 4(a) provides uniform guidelines and certainty as to expenses that will be reimbursed and delineates the documentation that must accompany a claim for reimbursement. Section 4(a)(3) permits reimbursement without prior approval of certain expenses and is intended to eliminate time previously spent by attorneys and judges considering such expenses. Section 4(a)(3)(F)(iv) clarifies that attorneys will not be reimbursed for the costs of copying the record since the record belongs to the indigent party. Section 4(b) delineates the expenses for which prior approval is required and sets out the requirements and procedure for obtaining prior approval. Section 4(b) ~~dispenses with the former requirement that prior approval be obtained from both the director and the chief justice and~~ makes prior approval of the director

essential and final. Section 4(d) cross-references Tenn. Sup. Ct. R. 42, which provides the mechanism and method for compensating foreign language interpreters and translators.

Section 5. Experts, investigators, and other support services.

~~(a)(1) In the trial and direct appeal of all criminal cases in which the defendant is entitled to appointed counsel in the trial and appeals of post conviction proceedings in capital cases involving indigent petitioners, and in juvenile transfer proceedings,~~ The court, in an *ex parte* hearing, may in its discretion determine that investigative or expert services or other similar services are necessary to ensure that the constitutional rights of the defendant are properly protected in the following circumstances:-

(A) The guilt and sentencing phases of a criminal trial;

(B) The direct appeal of all criminal cases in which the defendant is entitled to appointed counsel;

(C) The trial and appeals of post-conviction proceedings in capital cases involving indigent petitioners;

(D) Juvenile transfer proceedings; and

(E) Juvenile proceedings where a juvenile's liberty is in jeopardy due to the juvenile being charged with a delinquent offense involving a serious criminal allegation, and as part of an affirmative defense, the juvenile seeks to introduce expert testimony relating to a mental disease or defect bearing upon the issue of whether the juvenile had the mental state required for the offense charged.

(2) If such determination is made, the court may grant prior authorization for these necessary services in a reasonable amount to be determined by the court. The authorization shall be evidenced by a signed order of the court. The order shall provide for the payment or reimbursement of reasonable and necessary expenses by the director. See *Tenn. Code Ann. § 40-14-207(b)*; *State v. Barnett*, 909 S.W.2d 423 (Tenn. 1995); *Owens v. State*, 908 S.W.2d 923 (Tenn. 1995).

(32) In non-capital post-conviction proceedings, funding for investigative, expert, or other similar services shall not be authorized or approved. See *Davis v. State*, 912 S.W.2d 689 (Tenn. 1995). The following exceptions to his provision include:

(A) Costs for mental evaluations of a post-conviction petitioner to determine if he or she is competent to assist counsel in preparation for the post-conviction proceeding will be paid pursuant to Tenn. Code Ann. 33-7-301(a)(4)(A).

(B) An order issued requiring DNA analysis will be paid on behalf of a petitioner pursuant to the Post-Conviction DNA Analysis Act of 2001, Tenn. Code Ann. § 40-30-301 et seq. Payment shall be made only upon receipt by the director of a certified copy of the order and invoice from the laboratory that conducted the analysis. The bill shall set forth the name of the petitioner, the date the analysis was

performed, the amount of the bill, and the name and address of the laboratory to which payment is to be made. Tenn. Code Ann. § 40-30-313.

(C) An order issued requiring fingerprint analysis be paid on behalf of a petitioner pursuant to the Post-Conviction Fingerprint Analysis Act of 2021, Tenn. Code Ann. § 40-30-401 et seq. Payment shall be made only upon receipt by the director of a certified copy of the order and bill from the laboratory that conducted the analysis. The bill shall set forth the name of the petitioner, the date the analysis was performed, the amount of the bill, and the name and address of the laboratory to which payment is to be made. Tenn. Code Ann. § 40-30-413.

(b)(1) Every reasonable effort shall be made to obtain the services of a person or entity whose primary office of business is within 150 miles of the court where the case is pending. If the person or entity proposed to provide the service is not located within the 150-mile radius, the motion shall explain the efforts made to obtain the services of a provider within the 150-mile radius.

(2) Any motion seeking funding for expert or similar services shall itemize:

(A) the nature of the services requested;

(B) the name, address, qualifications, and licensure status, as evidenced by a curriculum vitae or resume, of the person or entity proposed to provide the services;

(C) the means, date, time, and location at which the services are to be provided; and

(D) a statement of the itemized costs of the services, including the hourly rate, and the amount of any expected additional or incidental costs.

(3) Any motion seeking funding for investigative or other similar services shall itemize:

(A) the type of investigation to be conducted;

(B) the specific facts that suggest the investigation likely will result in admissible evidence;

(C) an itemized list of anticipated expenses for the investigation;

(D) the name and address of the person or entity proposed to provide the services; and

(E) a statement indicating whether the person satisfies the licensure requirement of this rule.

(4) If a motion satisfies these threshold requirements, the trial court must conduct an *ex parte* hearing on the motion and determine if the requested services are necessary to ensure the protection of the defendant's constitutional rights.

(c) **Particularized Need Requirement:**

(1) Funding shall be authorized only if, after conducting a hearing on the motion, the court determines that there is a particularized need for the requested services and that the hourly rate charged for the services is reasonable in that it is comparable to rates charged for similar services.

(2) Particularized need in the context of criminal trials and appeals is established when a defendant shows by reference to the particular facts and circumstances that the requested services relate to a matter that, considering the inculpatory evidence, is likely to be a significant issue in the defense at trial, including both the guilt and sentencing phases, and that the requested services are necessary to protect the defendant's right to a fair trial. See *Barnett*, 909 S.W.2d at 423.

(3) Particularized need in the context of capital post-conviction proceedings is established when a petitioner shows, by reference to the particular facts and circumstances of the petitioner's case, that the services are necessary to establish a ground for post-conviction relief and that the petitioner will be unable to establish that ground for post-conviction relief by other available evidence. ~~See *Owens*, 908 S.W.2d at 928.~~

(4) Particularized need cannot be established and funding requests should be denied where the motion contains only:

(A) undeveloped or conclusory assertions that such services would be beneficial;

(B) assertions establishing only the mere hope or suspicion that favorable evidence may be obtained;

(C) information indicating that the requested services relate to factual issues or matters within the province and understanding of the jury; or

(D) information indicating that the requested services fall within the capability and expertise of appointed counsel. See, e.g., *Barnett*, 909 S.W.2d at 430; ~~*Caldwell v. Mississippi*, 472 U.S. 320, 323 n.1 (1985); *State v. Abraham*, 451 S.E.2d 131, 149 (N.C. 1994).~~

(d)(1) The director and ~~or~~ the chief justice, giving due consideration to state revenues, shall maintain uniformity as to the rates paid individuals or entities for services provided to indigent parties. The director will publish on the AOC website standard approved rates as often as determined reasonable by the chief justice. Requests for experts not listed on the published rate list, will be considered on a case by case basis. Appointed counsel shall make every effort to obtain individuals or entities who are willing

to provide services at an hourly rate less than the maximum. Subsequent requests for additional funding for the same investigator or expert giving due consideration to state revenues shall be subject to additional review by the director.

~~Although not an exclusive listing, compensation for individuals or entities providing the following services shall not exceed the following maximum hourly rates:~~

-

(A) Accident Reconstruction	\$115.00
- -	-
(B) Medical Services/Doctors	\$250.00
- -	-
(C) Psychiatrists	\$250.00
- -	-
(D) Psychologists	\$150.00
- -	-
(E) Investigators (Guilt/Sentencing)	\$ 50.00
- -	-
(F) Mitigation Specialist	\$ 65.00
- -	-
(G) DNA Expert	\$200.00
- -	-
(H) Forensic Anthropologist	\$125.00

-	-	-
(I)	Ballistics Expert	\$ 75.00
-	-	-
(J)	Fingerprint Expert	\$ 75.00
-	-	-
(K)	Handwriting Expert	\$ 75.00
-	-	-

(2) For persons or entities compensated at a rate of one hundred dollars (\$100) per hour or more, time spent traveling shall be compensated at no greater than fifty percent (50%) of the approved hourly rate.

(3) Investigators shall not be compensated unless licensed ~~in the state by the Private Investigation and Polygraph Commission~~ of Tennessee or exempted from this licensure requirement, except when an investigator licensed in another state ~~is~~ authorized by a court in Tennessee to conduct an investigation in that other state.

(4) In a post-conviction capital case ~~where the Office of the Post-Conviction Defender represents a petitioner, funding for investigative services and expert services and tests shall not be paid pursuant to this rule, a trial court shall not authorize more than a total of \$20,000 for all investigative services, unless in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.~~

(5) In a post-conviction capital case ~~where appointed counsel represents a petitioner~~, a trial court shall not authorize more than *a total of* ~~twenty-five thousand dollars (\$25,000) for the services of all experts nor more than twenty thousand dollars (\$20,000) for investigative services~~ unless, in its sound discretion, the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

~~(6) If an order is issued requiring payment on behalf of a petitioner who has been sentenced to the death penalty prior to April 28, 2023, for a determination as to whether the defendant is intellectually disabled, payment shall be made by the director only upon receipt of a certified copy of the order and invoice from the expert. The invoice must set forth the name of the petitioner, the amount of the bill, and the name and address of the expert to which payment is to be made. Tenn. Code Ann. § 39-13-203(g)(1)-(3).~~

~~(67)~~ Expenses shall not be authorized or approved for expert tests or expert services if the results or testimony generated from such tests or services will not be admissible as evidence.

(e)(1) If the requirements of sections 5(c) and (d) are satisfied and the motion is granted, the authorization shall be evidenced by a signed order of the court. Unless otherwise indicated in the order, the amount authorized includes both fees and necessary expenses under section 4(a).

(2) The order shall include a finding of particularized need and the specific facts that demonstrate particularized need as well as the information required by section 5(b)(1) or (b)(2).

(3) The court may satisfy the requirements of subsection (2) above by incorporating and attaching that portion of the defense motion that includes the specific facts supporting the finding of particularized need.

(4) **Prior Approval by the Director Required:** Once the services are authorized by the court in which the case is pending, the order and any attachments must be submitted in writing to the director for prior approval. ~~Claims for these services may not be submitted electronically.~~

(5) **Review Process if Request is Denied by the Director:** If the director denies prior approval of the request and the requesting attorney requests in writing within 10 days of the date of the notice of denial for review of the request by the chief justice, the claim ~~will~~shall also be transmitted to the chief justice for disposition and prior approval. The determination of the chief justice ~~is~~shall be final.

(6) Waiver of Claims: The approved expert or investigator shall file a claim for compensation no later than 180 day after entry of the final order of disposition of the case in each court in which the services were provided. Claims for compensation submitted after the 180-day period shall be deemed waived and will not be paid.

EXPLANATORY COMMENT:

~~Section 5(a)(1) contains the language that previously appeared as Section 5(a). Section 5(a)(1)(E) allows funding for mental health experts in juvenile cases where, pursuant to Tenn. R. Juv. P. 207(b), the juvenile as part of an affirmative defense seeks to introduce expert testimony relating to a mental disease or defect bearing upon the issue of whether the juvenile had the mental state required for the offense charged. Funding for mental health experts is available only after a court approved evaluation as provided in Tenn. Code. Ann. § 37-1-128(e)(1) is completed.~~ Section 5(a)(2) unequivocally provides that funding for investigative, expert, or other similar services is not available in non-capital post-conviction proceedings. Section 5(b)(1) explains that counsel must make “every reasonable effort” to obtain the services of experts, investigators or others who are located within 150 miles of the court where the case is pending. Section 5(b)(2) delineates the information that must be included in or submitted with a motion requesting funding for expert or similar services. Section 5(b)(3) delineates the information that must be included in or submitted with a motion requesting funding for investigative or similar services. Section 5(c) ~~provides~~ has been revised for clarity and includes in subsections (c)(1)–(4) definitions of particularized need and the standards governing a trial court’s consideration of funding requests. ~~Section 5(d) has been revised to provide certainty and guidance to attorneys, service providers, and trial courts.~~ Section ~~(5)~~(d)(1) establishes maximum hourly rates for certain services, instructs the director and the chief justice to maintain state-wide uniformity as to the rates paid for services. The director shall maintain and publish on

the AOC website a list of approved maximum hourly rates paid to experts and investigators. Section 5(d)(1) also; and directs appointed counsel to seek to retain individuals and/or entities willing to provide services at a rate less than the maximum. Section 5(d)(2) establishes permissible compensation rates for travel for experts paid in excess of one hundred dollars (\$100) per hour. Section 5(d)(3) establishes the licensure requirements for investigators. Section 5(d)(4) has been stricken because funding for experts and investigators in on all post-conviction capital cases where the petitioner is represented by the Office of the Post-Conviction Defender is paid from funds appropriated by the General Assembly on July 1, 2023 to the Office of the Post-Conviction Defender. and ~~(5) impose maximum limits on the amounts that may be approved in capital post conviction proceedings and permit funding in excess of these amounts only upon clear and convincing evidence that extraordinary circumstances exist.~~ Section 5(d)(6) precludes funding for expert tests or services if the results of the tests or the expert's testimony is per se inadmissible. Section 5(e)(1)-(3) delineates the information that must be included in or attached to orders authorizing funding. Section 5(e)(4)-(5) sets out the procedure that must be followed in obtaining prior approval of the request. Section 5(e)(5) provides that only those claims denied by the director will be submitted to the chief justice for disposition. ~~This changes prior law which required the chief justice to review every request for funding involving an hourly rate in excess of \$150 or an overall amount in excess of \$5,000, even those requests approved by the director.~~

Section 6. Review of claims for compensation and reimbursement of expenses.

(a)(1) All claims for attorney compensation and expenses shall be submitted utilizing the system established by the AOC for electronic submission. Claims of ~~fivefour~~ hundred dollars (~~\$500400.00~~) or more for attorney compensation and expenses shall be electronically submitted, and shall be reviewed and approved by the judge who presided over final disposition of the case prior to payment by the AOC. Electronic claims that total less than ~~fivefour~~ hundred dollars (~~\$500400.00~~) shall be exempt from the judicial review and approval requirement; such claims, however, shall be subject to the AOC's examination and audit pursuant to this section.

(2) Time spent by counsel on a single case or proceeding shall be included in a single claim for compensation. Cases must be combined into one claim where the court has consolidated cases or where criminal charges against one defendant are heard at the same proceeding.

(3) Claims shall be supported by a copy of the court order appointing counsel or authorizing the expenditure and, in the case of expenses requiring prior approval, a copy of the approval of the director and/or the chief justice.

(4) **Interim Claims Allowed in Capital Cases:** Appointed counsel in a capital case shall file interim claims. Interim claims shall be filed at least every 180 days, but no more frequently than every 30 days. Any portion of a claim requesting payment for services rendered more than 180 days prior to the date on which the claim is approved by the court in which the services were rendered shall be deemed waived and shall not be paid. ~~The provisions of this subsection regarding the time frame for submission of claims shall become effective January 1, 2005.~~

(5) **Timely Claims for Non-capital Cases:** Appointed counsel in non-capital cases are not permitted to file interim claims but shall file claims for compensation no later than 180 days after entry of the final order of disposition of the case in each court in which representation is provided. However, claims for the post-dispositional phase of a juvenile dependency and neglect proceeding shall be filed no later than 180 days from the last activity related to the case.

(6) **Wavier of Claims:** Claims for compensation submitted after the 180--day period, including those under sec. 6(a)(4), shall be deemed waived ~~and shall not be paid and will not be reviewed. The provisions of this subsection regarding the time frame for submission of claims shall become effective January 1, 2005.~~

(76) **Over Claim Audit: (A)** Counsel will be held to a high degree of care in the keeping of contemporaneous time records supporting all claims and in the application for payment. All claims must distinguish between in court hours (e.g., arguing before judge or jury) and out of court hours (e.g., drafting appellate briefs, meeting with a client or wait time in court). Counsel is required to maintain records supporting claims for payment.

(B) Claims for payment exceeding standard audit specifications, will be subjected to an “over claim” audit. An over claim audit is triggered when counsel is claiming more than 8 hours of in court hours in one day or more than 12 hours total in one day. Counsel must respond and cooperate with the this more comprehensive audit. Failure to comply with over claim audit requests and/or provide sufficient specificity in the claim or supporting documentation may constitute grounds for denial of the claim for compensation or reimbursement.

(C) When an over claim audit is conducted, and the director denies an attorney’s fee claim in whole or substantial part, counsel may request review by the chief justice. Such request must be in writing and received by the director or the director’s designee within ten (10) business days from the date of the notice of denial. On timely receipt of the request for review, the director shall transmit the claim to the chief justice for disposition. Failure to submit a timely request will be deemed waived. Review will be limited to the time records supporting the claim. The determination of the chief justice is final.

(87) The payment of a claim by the AOC shall not prejudice the AOC's right to object to or question any claim or matter in relation thereto. Claims shall be subject to reduction for amounts included in any claim or payment previously made which are determined by the AOC not to constitute proper remuneration for compensable services. The AOC reserves the right to deduct from claims which are or shall become due and payable any amounts which are or shall become due and payable to the AOC.

(98) As a part of its examination and audit of claims for compensation and reimbursement under this Rule 13, the AOC shall determine from information provided by the Board of Professional Responsibility whether there are unpaid costs assessed against counsel submitting the claim pursuant to Tenn. Sup. Ct. R. 9, Section 31.3. Claims for compensation and reimbursement under this Rule 13 shall be subject to reduction for any such unpaid costs.

(b)(1) The AOC shall examine and audit all claims for compensation and reimbursement to insure compliance with this rule and other statutory requirements. The AOC may decline to make any payment

or decline to continue to accept any assignment should either the attorney or the third-party assignee fail to comply with the requirements of Rule 13 and other statutory requirements.

(2) After such examination and audit and giving due consideration to state revenues, the director shall make a determination as to the compensation and/or reimbursement to be paid and cause payment to be issued in satisfaction thereof.

(3) Payment may be made directly to the person, agency, or entity providing the services.

(4) The determination by the director ~~is shall be~~ final, except where review by the chief justice ~~also~~ is timely requested under sections 2(e)(3) (complex or extended order), 5(e)(5) (prior approval for experts and investigators), and 6(a)(6) (over claim audits) required. In those instances, the determination of the chief justice ~~is shall be~~ final. The chief justice may designate another justice to perform this function if the chief justice determines that a designation is appropriate or necessary.

(5) Reductions made during the process of auditing a fee claim which are due to mathematical miscalculations or result from requests for payments not permitted by this rule shall not be forwarded to the chief justice for review.

~~(5) If the director denies an attorney's fee claim in whole or substantial part, such denial shall be forwarded to the chief justice for review. The determination of the chief justice shall be final. Reductions made during the process of auditing a fee claim which are due to mathematical miscalculations or result from requests for payments not permitted by this rule shall not be forwarded to the chief justice for review.~~

(c)(1) Appointed counsel may contract with a third-party agent to prepare and file claims for attorney compensation and expenses; provided, however, that counsel shall remain responsible for all filings and communications in connection with such claims;

(2) Appointed counsel may assign the right to payment of claims for attorney compensation and expenses to a third-party assignee; provided, however, that: (i) counsel electing to assign the right to payment shall assign such right for all subsequent cases in which counsel will present claims for payment pursuant to this rule; and (ii) counsel shall provide adequate written notice to the director of counsel's assignment of the right to payment to the third-party assignee. Such written notice shall not be effective unless submitted on the Uniform Assignment of Payment For Services Due to An Attorney form provided by the ~~AOC administrative office of the courts~~. Upon receipt of adequate written notice of counsel's assignment, the director shall make subsequent payments of counsel's claims to the third-party assignee. An assignment submitted to the director shall not relieve counsel of the responsibility for the accuracy and timeliness of all filings nor shall it relieve counsel of the responsibility to personally respond to inquiries from the ~~AOC administrative office of the courts~~ in connection with counsel's claims. Counsel's written notice of assignment shall remain in effect until the director receives written notice that counsel revokes the assignment. The third-party assignee shall agree in writing to indemnify and hold the state harmless for all payments made by the administrative office of the courts in good faith

and without notification that the assignment has been revoked and shall file such writing with the director.

EXPLANATORY COMMENT:

Section 6(a)(1)-(3) ~~has been revised to clarify~~ provides the requirements and process for submitting claims for compensation and reimbursement. Section 6(a)(4) mandates that appointed counsel in capital cases file interim claims at least every 180 days but no more frequently than every 30 days and provides that any portion of a claim for services rendered more than 180 days prior to the date on which the claim is approved by the court will be deemed waived and not paid. ~~The effective date of Section 6(a)(4) is January 1, 2005.~~ Section 6(a)(5) precludes appointed counsel in non-capital cases from filing interim claims for compensation but requires them to submit claims for compensation no later than 180 days after entry of the final order of disposition of the case in each court in which representation is provided. In a post-dispositional phase of a dependency and neglect case, with the 180-day period begins to running from the date of the last case-related activity ~~for post-dispositional phases of a dependency and neglect proceeding.~~ Section 6(a)(6) provides that claims for compensation submitted after the 180-day period will be deemed waived and not subject to reviewpaid. ~~The effective date of Section 6(a)(5) is January 1, 2005.~~ Section 6(a)(~~7~~6) provides that counsel will be held to a high degree of care in record keeping and documentation of the claim and provides the process for comprehensive audits (over claim audits) which are triggered on initial review. The two triggering events mentioned this section are examples only and are not the only events that may trigger a comprehensive over claim audit. Section 6(a)(~~8~~7) provides that the AOC reserves the right to review claims that come into question even if they have already been paid and establishes that the AOC may recoup any overpayment by setting off the amount of any such overpayment against claims that may be filed. ~~Section 6(b) delineates how claims are audited, approved for payment, and how payments are made.~~ Section 6(b)(~~4~~7)(C) provides that the determination of the director and/or the chief justice is final. ~~Unlike prior law, Section 6 does not provide for an appeal to the Tennessee Supreme Court from the decision of the director or the chief justice. Section 6(b)(4) also provides that the chief justice may designate another justice to review these claims if the chief justice determines that designation is appropriate or necessary. Section 6(b)(5) sets out those instances where an attorney may appeal the director's decisions to the chief justice.~~

Section 7. Contracts for Indigent Representation.

In addition and as an alternative to the procedures for appointment and compensation of court-appointed counsel for services described above, the ~~director~~Administrative Director is authorized to enter into agreements with attorneys, law firms, or associations of attorneys to provide legal services for a fee to indigent persons in: ~~(1) emergency involuntary judicial hospitalization actions brought pursuant to Tenn. Code Ann. Title 33, Chapter 6, Part 4; (2) Title IV-D child support enforcement proceedings brought pursuant to Tenn. Code Ann. Title 36, Chapter 5; and (3) cases under Titles 36 and 37 of the Tennessee Code Annotated involving allegations against parents that could result in finding a child dependent or neglected or in terminating parental rights.~~ Such contracts may establish a fixed fee for representation in a specified number and type of cases; provided, however, that any such fixed fee shall not exceed the rates specified in Section 2.

~~Any such contracts for indigent representation shall be awarded based on an evaluation to determine the quality of representation to be provided, including the ability of attorneys making proposals to exercise independent judgment on behalf of each client, and to maintain workload rates that allow for attorneys to devote adequate time to each client covered by such contracts.~~

Attorneys providing legal services pursuant to contracts entered into pursuant to this Section shall be appointed to represent all indigent defendants in these cases unless such representation is otherwise prohibited by the Rules of Professional Conduct. *See* Tenn. Sup. Ct. R. 8. In any such case, the court shall appoint qualified counsel pursuant to the provisions of Section 1 of this rule.

The ~~Administrative Director~~ shall prescribe adequate procedures to ensure compliance with the terms of such contracts and shall report to the Court annually on the effectiveness of the contract process for the provision of indigent representation.

Credits

[Amended effective December 1, 1982; November 7, 1983; August 20, 1984; August 4, 1986; amended May 12, 1992, effective July 1, 1991; amended effective July 1, 1993; September 1, 1994; April 3, 1997; July 1, 1997; February 4, 1998; November 23, 1998; January 25, 2001; June 25, 2001; April 29, 2003; amended June 23, 2003, effective July 1, 2003; June 1, 2004, effective July 1, 2004; effective September 2, 2004; September 2, 2005, effective October 1, 2005; amended effective June 12, 2006; amended effective February 27, 2008; amended effective July 1, 2008; July 13, 2011; June 27, 2012; July 1, 2012; amended February 6, 2013, effective July 1, 2013; February 20, 2013, effective April 1, 2013; amended effective March 5, 2013; amended June 25, 2013, effective July 1, 2013; September 4, 2013, effective January 1, 2014; September 19, 2013, effective January 1, 2014; November 19, 2014, effective January 1, 2015; June 29, 2018, effective July 1, 2018; amended effective June 28, 2019; March 27, 2020; October 26, 2021.]