

ORIGINAL

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
2012 DEC -4 AM 8:19

IN RE: AMENDMENT TO RULE 17A, RULES OF THE SUPREME COURT
ASSOCIATE COURT CLERK
NASHVILLE

No. M2012-02132-SC-RL2-RL – Filed: October 8, 2012

RESPONSE TO INVITATION FOR PUBLIC COMMENT

In response to the Court’s invitation for public comment concerning the proposed change to the Order of Deferral (Judicial Diversion), the Executive Committee of the Tennessee District Public Defenders Conference recommends one revision to the new form as presented.

The Executive Committee would refer to Supreme Court Rule 13 in support of this recommendation. Rule 13 provides that in cases of indigency, “. . . 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. . .” Tenn. Sup. Ct. R. 13(4)(A) (2012). It is only under circumstances in which the public defender has a conflict or is unqualified that the court should appoint counsel from the private bar. *Id.* at (4)(B).

Further, members of the Executive Committee have noticed that occasionally the private attorney checkbox is mistakenly checked because of its position in front of the public defender checkbox. If this revision is made, this clerical error should occur less often. This recommendation helps to ensure an accurate collection of caseload information, furthering the accuracy of the caseload determinations of both the Public Defenders and Administrative Office of the Courts.

Therefore, as the public defender is to be the default appointment for indigent defendants, it is the recommendation of the Executive Committee of the Tennessee District Public Defenders

CONFIDENTIAL

Conference that the checkbox for the appointment of a public defender be moved to a position in front of the checkbox for the appointment of a private attorney within the Order of Deferral (Judicial Diversion) form. (See Appendix A).

Respectfully submitted,

Executive Committee of the Tennessee District Public
Defenders Conference

By: Guy Wilkinson by Jeffrey S. Henry by permission

Guy Wilkinson
Tenn. B.P.R. #005845
President
211 Seventh Avenue North, Suite 320
Nashville, TN, 37219-1821
Phone: 615-741-5562
Fax: 615-741-5568
Email: guy.wilkinson@tn.gov

By: Jeffrey S. Henry
Jeffrey S. Henry
Tenn. B.P.R. #002420
Executive Director
211 Seventh Avenue North, Suite 320
Nashville, TN, 37219-1821
Phone: 615-741-5562
Fax: 615-741-5568
Email: jeffrey.henry@tn.gov

APPENDIX A

IN THE CRIMINAL/CIRCUIT COURT OF _____ COUNTY, TENNESSEE

Case Number: _____ Count # _____ Counsel for the State: _____
 Judicial District: _____ Judicial Division: _____ Counsel for the Defendant: _____
State of Tennessee Retained Public Defender Appt Private Atty Appt
 vs. Counsel Waived Pro Se
 Defendant: _____ Alias: _____ Date of Birth: _____ Sex: _____
 Race: _____ SSN: _____ Relationship to Victim: _____ Victim's Age: _____
 State ID #: _____ County Offender ID # (if applicable): _____ State Control #: _____
 Arrest Date: _____ Indictment Filing Date: _____

ORDER OF DEFERRAL (JUDICIAL DIVERSION) Original Amended Corrected

On the _____ day of _____, 20____, the defendant:

<input type="checkbox"/> Pled Guilty <input type="checkbox"/> Pled Nolo Contendere Was Found Guilty By: <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Bench Trial	Indictment: Class (circle one) 1 st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name AND TCA §: _____ Amended Offense Name AND TCA §: _____ Offense Date: _____ County of Offense: _____ Deferred Offense Name AND TCA §: _____ Deferred Offense: Class (circle one) A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
---	---

Upon review of the case, the court finds the facts stated above as well as the following (**For Item 3, Check ONE Of The Two Boxes**):

1. The defendant is eligible for deferral of the prosecution pursuant to Tennessee Code Annotated section (T.C.A.) 40-35-313;
2. The Tennessee Bureau of Investigation has certified (per attached certificate) that the defendant does not have a prior felony or Class A misdemeanor conviction;
3. The defendant was not charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in Title 68, Chapter 11, Part 10; **OR**
 The defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by Title 68, Chapter 11, Part 10, whereupon a copy of this order shall be forwarded by the clerk to the department of health;
4. The defendant consents to T.C.A. 40-35-313 deferral, as evidenced by the defendant's signature below; AND
5. The defendant should be granted a deferral of charges pursuant to T.C.A. 40-35-313.

It is, therefore, **ORDERED** that the prosecution in this case is deferred pursuant to T.C.A. 40-35-313, and the defendant is placed on probation. The terms and conditions ordered by this court apply to the defendant's probation and are incorporated herein by reference thereto.

Probation Term: Total Length _____ Beginning Date _____ Ending Date _____ Supervised Unsupervised

Supervising Entity (unless otherwise provided to the defendant by the court): Name _____
 Phone Number _____ Address _____

Defendant's Contact Information (unless otherwise provided to the probation officer by the court): Phone Number _____
 Address _____

<p align="center">Costs</p> \$ _____ Sex Offender Tax (39-13-709) \$ _____ Sex Offender Fine (40-24-108) \$ _____ Drug Testing Fee (39-17-420) \$ _____ Treatment Expenses (40-35-313) \$ _____ Supervision Fees (40-35-313) \$ _____ Other: _____ _____ _____	<p align="center">Concurrent with:</p> _____ <p align="center">Consecutive to:</p> _____	<p align="center">Restitution</p> Victim Name _____ Address _____ _____ Total Amount \$ _____ Per Month \$ _____	<p align="center">Pretrial Jail Credit Period(s):</p> From _____ to _____ From _____ to _____ From _____ to _____ From _____ to _____
--	---	---	---

 Defendant

ENTER this the _____ day of _____, 20____.

 JUDGE'S NAME

 JUDGE'S SIGNATURE

 Counsel for the Defendant

 Counsel for the State of Tennessee