

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: SUPREME COURT RULE 13

No. M2007-02331-SC-RL1-RL - Filed: November 6, 2007

ORDER

On October 16, 2007, Billable Hours, Inc., and Robert L. Foster, Esq., filed a petition asking the Court to amend Rule 13, Rules of the Tennessee Supreme Court, “to expressly confirm the acceptability of submission of fee and expense claims by appointed counsel through a claims processing agent or service and the dispatch of payments of such claims, made payable to appointed counsel, to the address of the claims processing agent, as described in the proposal [sic] Subsection (c) to Rule 13, Section 6 submitted with this Petition, or in such manner as the Court deems appropriate.” Exhibit B to the Petition sets out several proposed amendments to Rule 13, which amendments would permit an attorney filing a claim for compensation and/or reimbursement under Rule 13 to use a third-party agent or service to process and receive payment of the claim on behalf of the attorney.

The Court hereby publishes for public comment the proposed amendments to Rule 13 as set out in Exhibit B to the Petition, which is attached hereto as Appendix A. The Court hereby solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is December 6, 2007. Written comments should be addressed to:

Michael W. Catalano, Clerk
Re: Rule 13 Comments
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order and the attached Appendix A to the Tennessee Association of Criminal Defense Lawyers, the Tennessee District Public Defenders Conference, the Attorney General & Reporter, the Tennessee District Attorneys General Conference and the Tennessee Bar Association. In addition, the Petition to Amend Rule 13, in its entirety, and this order and Appendix A shall be posted on the Tennessee Supreme Court’s website.

PER CURIAM

APPENDIX A

Exhibit B to Petition *In Re Supreme Court Rule 13*
Proposed Language for Amendment of Supreme Court Rule 13

1 Delete the word “and” after Section (a)(1)(F), delete the period after Section (a)(1)(G), and insert
2 a semicolon followed by the word “and” and a comma after Section (a)(1)(G). Then, add new
3 subsection in Section 1(a)(1), as follows:

4 (H) to establish guidelines and procedures for preparation of claims by an agent on behalf
5 of appointed counsel.

6
7 Add the following sentence to the end of Section 6(b)(3):

8 Payment “made directly” includes mailing the payment to any agent acting on behalf of
9 appointed counsel under Section 6(c) of this Rule.

10

11 Add subsection (c) to Section 6, as follows:

12 (c) Claims for compensation and/or reimbursement may be prepared and submitted to AOC by
13 an agent or processing service on behalf of appointed counsel. If the services of an agent or
14 processing service are used, then the following provisions apply:

15 (1) Appointed counsel shall ensure compliance with RPC 1.6 in regard to any information
16 provided to the agent.

17 (2) Before preparing any claim for submission to a trial court or the AOC, an agent shall file
18 a notice with the director that provides to the director the name and address of agent (and the
19 agent’s stockholders or partners, as applicable) and the name of the agent’s officers and/or

20 managers. The notice shall contain a sworn statement by the agent that the agent will adhere to
21 this rule, will not engage in any prohibited alteration of claims processed by the agent, and will
22 honestly and respectfully deal with the clerks, judges, and justices of the courts of this state and
23 with the employees of the AOC. The notice shall state that agent (and the agent's stockholders
24 or partners, as applicable) submit to the jurisdiction of this Court for any determinations made as
25 to any claim processed by the agent and submitted to the director under this rule.

26 (3) The notice described in subsection (c)(2) above may contain a specimen of any stamp
27 certification(s) the agent will use in preparing claims. If a specimen stamp certification(s) is(are)
28 included, then the notice shall also contain a statement that the agent's certification stamp(s) will
29 not be placed on any claim submitted to a court or to the AOC unless the statements contained in
30 the certification(s) is(are) true and accurate. If a specimen certification(s) is included with the
31 notice, then the agent may comply with the certification provisions of this rule by affixing a
32 stamped certification to any claim prepared by the agent. If no specimen certification(s) is(are)
33 included with the original notice described in subsection (c)(2) above, then an amended notice
34 may be filed with the director containing the specimen certification(s).

35 (4) The services to be provided by the agent to appointed counsel must be set forth in a
36 written agreement. Upon request of the director, a copy of the written agreement shall be
37 provided to the director, but, because the proprietary business information of the agent is
38 contained in the agreement, the agreement shall not be made a public record.

39 (5) All claim forms must be signed by appointed counsel in duplicate and the preparation of
40 a claim form by an agent shall not relieve appointed counsel of direct responsibility for the
41 veracity of the claim form and all individual items in the claim form. If an agent is used for
42 claim form preparation and/or processing, then the name of the agent must be submitted with or

43 upon the claim form as follows: “This claim form (including any accompanying documentation)
44 was prepared and/or processed on behalf of the appointed counsel whose name appears upon this
45 claim form by [*name and address of agent*], and accurately reflects the information provided by
46 to the agent by the named attorney.” This certification must appear in blue on both original
47 claim forms prior to the agent sending the original claim forms to the court for approval.
48 Furthermore, the following additional certification must be submitted with the claim form after
49 approval by the appointing court: “[*Name of agent*] certifies that the foregoing claim form and
50 any accompanying documentation was prepared using information provided by the appointed
51 counsel whose name appears upon this claim form and that no alterations have been made to the
52 claim other than this certification since the court approved this claim.” This certification, shall
53 appear in blue either on the front or back of the first page of both original claim forms.

54 (6) The agent shall mail one original claim to the appropriate court clerk for filing and
55 forward the other original to the director. The agent shall attach a copy of the order appointing
56 counsel to the original claim forwarded to the director (along with the original certification for
57 extended and complex representation, if such a certification exists).

58 (7) For purposes of the 180 day filing rule, the filing date shall be determined to be the date
59 the appropriate judicial official executed and dated the claim.

60 (8) Appointed counsel shall retain a copy of all documentation related to time and expenses
61 provided to an agent, in paper or electronic format. The agent shall maintain, in either paper or
62 electronic format, copies of all time records and other documentation provided by its principals.
63 The agent shall also retain, in either paper or electronic format, a copy of all claim forms
64 submitted to a court on behalf of its principals and shall provide copies upon request to the trial
65 court, the director, or appointed counsel.

66 (9) Payment shall be made only in the name of the appointed counsel and only with the
67 taxpayer identification number of appointed counsel. Upon written request of appointed
68 counsel, payment and all accompanying documentation relating to a claim shall be mailed to
69 appointed counsel in care of the agent at the agent's mailing address. Such written request from
70 an individual attorney shall remain in force until revoked in writing signed by the attorney and
71 the agent. As long as the written request remains in effect, payment to the address of the agent is
72 payment to appointed counsel, subject to any dispute regarding the amount of the payment.

73 (10) After having received notice of an agent's involvement, the director shall deal
74 directly with such an agent to resolve administrative, statistical, and other issues that are capable
75 of being resolved without the direct involvement of appointed counsel. The director shall
76 provide an agent, upon the agent's request, information relating to a claim that the agent
77 submitted on behalf of appointed counsel. If the director requires further information, such as
78 for an audit of a claim, the director shall first request further documentation from the agent. The
79 agent shall obtain the requested information from its principal to the extent such information is
80 available and forward the information to the director promptly. Nothing in this rule shall
81 prohibit the director from contacting an appointed attorney directly and an agent shall facilitate
82 direct contact with appointed counsel when requested by the director.

83 (11) An agent, prior to submitting any claims to an appointing court to which it has not
84 submitted claims in the past, shall contact that court in writing and make known to that court that
85 the agent will be preparing and/or processing claim forms for attorney(s) practicing in that court.
86 The written notification to the trial court shall include a copy of this section of Rule 13.

87 (12) When submitting claims for approval by a court, the agent shall provide the appropriate
88 court, judge, justice, or other judicial official with two original claims for approval and a copy of

89 the order appointing counsel, along with a self addressed stamped envelope for return of the
90 claim forms and order to the agent. Once the court, judge, justice, or other judicial official acts
91 upon the claim, then the official shall return the claim to the agent, so long as the agent provided
92 to the official proper self-addressed stamped mailing containers.

93 (13) If a claim requires an extended and complex motion and certification, the agent shall
94 forward the motion, executed by appointed counsel, to the appropriate court clerk to be filed and
95 shall attach a copy to the original claims provided to the court for approval. In the event the
96 court certifies the matter as extended and complex, the court shall forward the original
97 certification along with its accompanying claims to the agent and the agent shall forward the
98 original certification with the claim form to the director, and the agent shall maintain a copy of
99 such certification in paper or electronic format.

100 (14) An agent shall not alter a claim or any accompanying documentation or certification in
101 any manner after the claim form has been executed by a judicial official, other than by placing
102 the agent's required certification upon the claim form, or upon request of the director.

103 (15) If the director determines that any agent is violating the provisions of this rule, is
104 altering claim forms so that the claims do not reflect appointed counsel's time and expenses as
105 provided to the agent by appointed counsel, or is altering any claims after approval by the court,
106 other than as provided for in this rule, then the director shall issue a written notice to the agent
107 setting forth the exact items asserted to have violated this rule or to have deviated from the time
108 and expenses provided by appointed counsel. The notice shall provide the agent a reasonable
109 time of not less than thirty (30) days to correct all existing problems and bring all claims into
110 compliance with this rule and other applicable law. If the agent fails to rectify the problems
111 identified by the director, then the director may refuse to process further claims prepared,

112 processed, and/or submitted by that agent and shall issue a notice of refusal to process further
113 claims. The notice of refusal must be in writing. The director, however, shall process any and
114 all claims that were executed and approved by appointed counsel prior to the date of the notice
115 of refusal, so long as no such claims were improperly altered by the agent. Any agent whose
116 principals' claims the director refuses to process may file a petition with this Court for review of
117 the decision of the director. Any agent may request a hearing within ten (10) days of the
118 director's refusal to process claims. If a hearing is not requested or after a hearing the director's
119 refusal is affirmed by the Court, then the director shall send notice to all attorneys for which that
120 agent has prepared and processed claims for in the last three (3) months, stating the actions taken
121 by the AOC and/or the Court.