

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENTS TO SUPREME COURT RULE 15,
REIMBURSEMENT OF COSTS IN MENTAL HEALTH
PROCEEDINGS, AND SUPREME COURT RULE 16,
APPOINTMENT AND COMPENSATION OF COUNSEL
FOR INDIGENT PERSONS IN PAROLE REVOCATION
HEARINGS**

**Filed
September 4, 2001**

ORDER

Supreme Court Rule 15 is hereby amended by deleting it in its entirety and by substituting instead the following:

Rule 15. Reimbursement of costs in mental health proceedings.

Pursuant to Tenn. Code Ann. § 33-3-503(c), the Supreme Court hereby prescribes the nature of costs for which reimbursement may be allowed in judicial proceedings relating to indigent persons under Title 33, Mental Health and Developmental Disabilities. This rule does not apply to those costs incurred in criminal proceedings, including hearings to determine competency to stand trial, which are regulated under other Supreme Court Rules and statutes.

1. Appointment of counsel.

Counsel for an indigent person who is the subject of a judicial proceeding under Chapters 3 through 8 of Title 33 shall be appointed pursuant to Rule 13, Rules of the Tennessee Supreme Court. The provisions of Sections 1, 2, 4 and 6 of Rule 13 shall apply to appointment of counsel in such judicial proceedings unless the context of a particular provision requires otherwise.

Counsel appointed shall, unless excused by order of the Court, continue to act for the party throughout the proceedings.

2. Compensation for appointed counsel.

Claims for compensation and reimbursement of expenses in judicial proceedings under Chapters 3 through 8 of Title 33 shall be filed and acted upon by the appointing court in compliance with Rule 13. The director of the Administrative Office of the Courts shall examine and audit such claims and determine the amount of compensation and reimbursement pursuant to Rule 13.

If an attorney is substituted for an attorney previously appointed for the indigent person in the same case, the total compensation which may be paid both attorneys shall not exceed the maximum compensation set by Rule 13 for one proceeding. In such cases, compensation for attorneys' services shall not be fixed by the judge until the conclusion of proceedings, so that the judge may make such apportionment between the attorneys as may be just.

3. Clerk fees.

In all judicial proceedings under Chapters 3 through 8 of Title 33, the clerks of the several trial courts shall tax costs in a bill of costs pursuant to Tenn. Code Ann. §§ 8-21-104 and 8-21-401. Appellate clerks shall tax costs to a bill of costs pursuant to Tenn. Code Ann. § 8-21-501. This bill of costs on the approved Supreme Court form shall be submitted to the director of the Administrative Office of the Courts.

4. Sheriff fees.

In all judicial proceedings under Chapters 3 through 8 of Title 33 requiring the services of sheriffs or deputies, the sheriff shall submit a request to the clerk of the court where the proceedings were held, demanding fees pursuant to Tenn. Code Ann. § 8-21-901. The sheriff's itemized statement for all travel expenses shall be appended to the bill of costs submitted to the director of the Administrative Office of the Courts. The clerk of court shall tax these costs as part of the bill of costs submitted on the approved Supreme Court form to the director of the Administrative Office of the Courts.

5. Witness fees.

Witnesses subpoenaed to appear in proceedings held pursuant to Chapters 3 through 8 of Title 33 shall be paid fees and mileage as provided for witnesses generally (Tenn. Code Ann. § 24-4-101 et seq.). A state employee employed at a fixed compensation, serving as a witness shall not claim a witness fee (Tenn. Code Ann. § 8-23-201).

6. The director of the Administrative Office of the Courts shall examine and audit all claims for clerks' fees, sheriffs' fees, and witnesses' fees to insure compliance with these rules and other statutory requirements. Upon the audit and approval of the clerks' fees, sheriffs' fees, and witnesses' fees, the director of the Administrative Office of the Courts shall issue payment in satisfaction of the approved fees. The determination by the director of the Administrative Office of the Courts shall be final.

Supreme Court Rule 16 is hereby amended by deleting it in its entirety and by substituting instead the following:

Rule 16. Appointment and compensation of counsel for indigent persons in parole revocation hearings.

Pursuant to Tenn. Code Ann. § 40-28-122(b), the Supreme Court hereby adopts the following rules for the payment of expenses and compensation to attorneys appointed to represent indigent persons in parole revocation proceedings. For purposes of this rule, a proceeding is a two-stage process, beginning with an initial, probable cause hearing which may be followed by a revocation of parole hearing.

1. Appointment of counsel.

The Board of Probation and Parole (hereinafter referred to as the Board) is authorized to appoint, acting on its own or through its designee, legal counsel for an indigent individual in parole revocation proceedings. Counsel for an indigent individual shall be appointed pursuant to Rule 13, Rules of the Tennessee Supreme Court.

The provisions of Sections 1, 2, 4, and 6 of Rule 13 shall apply to appointment of counsel by the Board unless the context of a particular provision requires otherwise. The word "court," as used in Sections 1, 2, 4, and 6 of Rule 13, shall be deemed to include the Board unless the context requires otherwise.

If the case appears to be one which merits counsel, the Board or its designee shall make a determination of whether the parolee is indigent pursuant to Rule 13(e). The Board shall, in writing, note its determination of the issue of indigency, and the written finding shall become a part of the parolee's record.

In cases in which the individual faces criminal charges arising out of or related to the same set of operative facts from which the parole revocation proceedings arose, the same attorney shall, when possible, represent the defendant/parolee at all proceedings. However, the attorney shall receive but one compensation for work done in the furtherance of the attorney's duties for both criminal and parole revocation proceedings where such work overlaps. One attorney shall represent the parolee at all stages of the parole revocation proceedings when possible. Should different attorneys represent the parolee at each stage of the proceeding, the total compensation which may be paid to all attorneys shall not exceed the maximum compensation for one parolee, as provided for in Rule 13. In all such cases, compensation for attorneys' services shall not be fixed by the Board until the conclusion of the parole revocation proceeding so that the Board may make such apportionment of compensation between or among the attorneys as may be just.

If after being advised of the right to an attorney, the parolee refuses counsel, such refusal shall be made in writing and signed by the parolee in the presence of the Board or its designee who shall acknowledge the person's signature. The written refusal shall be made a part of the person's record.

2. Compensation for appointed counsel.

a. Claims for compensation and reimbursement of expenses shall be filed and acted upon by the Board in compliance with Rule 13. The director of the Administrative Office of the Courts shall examine and audit such claims and determine the amount of compensation and reimbursement pursuant to Rule 13.

b. All claims for compensation and for reimbursement of expenses shall be submitted by the attorney to the Board or its designee. The Board shall certify all fees and costs for all attorneys on one reimbursement claim for each case on a form authorized by the director of the Administrative Office of the Courts. The Board or its designee shall assign to each case a case number by which the case shall be identified in all correspondence with the director of the Administrative Office of the Courts.

FOR THE COURT:

Frank F. Drowota, III, Chief Justice