

Supreme Court Rule 13

- Determining Indigency
- Expert/Investigative Services
- Attorney Fee Claims

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

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.

(b) Each 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) 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 Tennessee Supreme Court Rule 28 and *Tenn. Code Ann. §§ 40-30-101 et seq.*;

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

(F) Judicial proceedings under *Tenn. Code Ann.*, 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. Code Ann.*, Title 34;

(H) Cases under *Tenn. Code Ann. § 37-10-304* and *Tennessee Supreme Court Rule 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) 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) and (D) 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 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;

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

(D) Proceedings to terminate parental rights. 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. For purposes of this subsection, the compensation limits established in Section 2 apply to each guardian ad litem appointed rather than to each child; and

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

(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 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 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 unless the indigent party rejects the offer of appointment of counsel with an understanding of the legal consequences of the rejection.

(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 *§ 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 indigent party is financially able to defray a portion or all the cost of the indigent party's representation, the court shall enter an or-

der 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. [As amended by order filed June 25, 2013.]

Explanatory Comment: 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 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 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) (1) The hourly rate for appointed counsel in non-capital cases shall not exceed forty dollars (\$40) per hour for time reasonably spent in trial preparation and fifty dollars (\$50) per hour for time reasonably spent in court.

(2) For purposes of this rule, "time reasonably spent in trial preparation" means time spent preparing the case to which the attorney has been appointed to represent the indigent party. "Time reasonably spent in court" means time spent before a judge on the case to which the attorney has been appointed to represent the indigent party.

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

(2) Five hundred 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 Tennessee Code Annotated, Title 33, Chapters 3 through 8, Mental Health

Law;

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

(E) Cases under *Tenn. Code Ann. § 37-10-304* and *Tennessee Supreme Court Rule 24*, relative to petitions for waiver of parental consent for abortions by minors; and

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

(3) One thousand dollars (\$1,000) for:

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

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

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

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

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

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

(G) Probation revocation proceedings;

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

(I) 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) Cases in trial courts in which the defendant is charged with a felony;

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

(A) Seven Hundred and Fifty dollars (\$750) 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 Dollars (\$1,000) 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 dollars (\$1000) for:

(i) Proceedings against parents in which allegations against the parents could result in termination of parental rights;

(ii) Guardian ad litem representation in termination of parental rights cases in accordance with section 1(d)(2)(D); and

(iii) Counsel appointed pursuant to *Tennessee Supreme Court Rule 40(e)(2)* and in accordance with section 1(d)(2)(C) for a child or sibling group in termination of parental rights cases.

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

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

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

(C) The case involved multiple protracted hearings;

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

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

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

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

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

(B) One thousand, five hundred dollars (\$1,500) in those categories of cases where the maximum compensation is otherwise seven hundred and fifty dollars (\$750);

(C) 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); and

(D) Three thousand dollars (\$3,000) in cases in trial courts in which the defendant is charged with a felony. Where the felony charged is first-degree murder, the director may waive the three thousand dollar (\$3,000) maximum if the order demonstrates that extraordinary circumstances exist and failure to waive the maximum would result in undue hardship.

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

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

Explanatory Comment: Section 2(b) unequivocally provides that only one attorney will be compensated in non-capital cases. Section 2(c) clarifies that appointed counsel will not be paid in-court rates for time spent waiting for a case to be called and that appointed counsel will not be compensated for time spent on Board of Professional Responsi-

bility 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)(4). Section 2(d)(4) 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)(4)(B) increases the maximum compensation for appointed counsel in certain post-dispositional proceedings from \$500 to \$750. Section 2(e)(1) further delineates the procedure and factors supporting certification of a case as complex or extended, including the mandatory requirement that the order certifying the claim be submitted to the AOC contemporaneously with the claim requesting complex or extended compensation. Section 2(e)(2) reiterates that approval of the director or the chief justice is required and that the determination of the chief justice is final. Section 6 of this rule sets out in more detail the claims review process. Section 2(e)(3)(A)-(C) has been revised to simplify and clarify the language. Section 2(e)(3)(D) has been revised to limit waiver of the \$3,000 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 *Tenn. Code Ann. § 39-13-208* and *Tennessee Rule of Criminal Procedure 12.3(b)*, has been filed and no order withdrawing the notice has been filed. Non-capital compensation rates apply to services rendered by appointed counsel after the date the notice of intent to seek the death penalty is withdrawn.

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

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

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

(c) Lead counsel must:

- (1) be a member in good standing of the Tennessee bar or be admitted to practice *pro hac vice*;
- (2) have regularly participated in criminal jury trials for at least five years;
- (3) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense; and, complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;
- (4) have at least one of the following:
 - (A) experience as lead counsel in the jury trial of at least one capital case;
 - (B) experience as co-counsel in the trial of at least two capital cases;
 - (C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one murder case;
 - (D) experience as lead counsel or sole counsel in at least three murder jury trials or one murder jury trial and three felony jury trials; or
 - (E) experience as a judge in the jury trial of at least one capital case.

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

(d) Co-counsel must:

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Lead counsel out-of-court--seventy-five dollars (\$75);

(2) Lead counsel in-court--one hundred dollars (\$100);

(3) Co-counsel out-of-court--sixty dollars (\$60);

(4) Co-counsel in-court--eighty dollars (\$80);

- (5) Post-conviction counsel out-of-court--sixty dollars (\$60);
- (6) Post-conviction counsel in-court--eighty dollars (\$80);
- (7) Counsel appointed pursuant to Section 3(i) out-of-court--sixty dollars (\$60);
- (8) Counsel appointed pursuant to Section 3(i) in-court--eighty dollars (\$80).

(l) For purposes of this rule, "out-of-court" means time reasonably spent working on the case to which the attorney has been appointed to represent the indigent party. "In-court" means time 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) and (3) previously appeared as Section 3(l) of Rule 13. Section 3 now permits former prosecutors and judges with appropriate experience to be appointed counsel in capital cases. Section 3(c)(2) has been revised to require five years participation in criminal jury trials, rather than three years representation of defendants in criminal jury trials. Section 3(c)(3) has been revised to enhance the educational requirements for appointed counsel. Section 3(c)(4)(E) has been revised to include an experience requirement applicable only to former judges. Section 3(i) has been revised to clarify that its scope is limited to affording compensation to appointed counsel in a proceeding challenging the inmate's competency to be executed. Section 3(k)(7) and (8) provides that attorneys appointed in competency proceedings will be compensated at the same \$60/\$80 rates applicable in other capital post-conviction proceedings. Section 3(l) precludes compensating appointed counsel at in-court rates for time spent waiting for a case to be called and also precludes compensating appointed counsel 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 for the sole purpose of hand-delivering or filing a document.

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) 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;

(B) 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;

(C) Lodging where an overnight stay is required at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates;

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

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

(E) Parking at actual costs up to ten dollars per day if supported by a receipt;

(F) 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 \$500.

(G) 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 \$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 \$500.

(H) 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.

(I) Miscellaneous expenses 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. Prior approval of the court and the director is required if an attorney, expert, or investigator anticipates that total miscellaneous expenses will exceed \$250.

(J) 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.

(K) 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 \$100.00.

(b) Expenses not listed in Section 4(a), including travel outside the state, 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 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 re-

imbursement 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 and in the trial and appeals of post-conviction proceedings in capital cases involving indigent petitioners, 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. 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).

(2) 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).

(b) (1) Every 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) (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 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 shall maintain uniformity as to the rates paid individuals or entities for services provided to indigent parties. 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. 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 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, 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, a trial court shall not authorize more than a total of \$25,000 for the services of all experts unless in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

(6) 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 (e)(2) above by incorporating and attaching that portion of the defense motion that includes the specific facts supporting the finding of particularized need.

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

(5) If the director denies prior approval of the request, the claim shall also be transmitted to the chief justice for disposition and prior approval. The determination of the chief justice shall be final.

Explanatory Comments: Section 5(a)(1) contains the language that previously appeared as Section 5(a). 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 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) 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, 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 \$100 per hour. Section 5(d)(3) establishes the licensure requirements for investigators. Section 5(d)(4) 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 two hundred dollars (\$200.00) 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 two hundred dollars (\$200) 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.

(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) 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) 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 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. Claims for compensation submitted after the 180-day period 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.

(6) 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. Counsel is required to maintain records supporting claims for payment. Failure to provide sufficient specificity in the claim or supporting documentation may constitute grounds for denial of the claim for compensation or reimbursement.

(7) 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.

(8) 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 shall be final, except where review by the chief justice also is required. In those instances, the determination of the chief justice 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) 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 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 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 Comments: Section 6(a)(1)-(3) has been revised to clarify 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 disposition of the case in each court in which representation is provided, with the 180 day period running from the date of the last case-related activity for post-dispositional phases of a dependency and neglect proceeding. Claims for compensation submitted after the 180-day period will be deemed waived and not paid. The effective date of Section 6(a)(5) is January 1, 2005. Section 6(a)(6) provides that counsel will be held to a high degree of care in record keeping and documentation of the claim. Section 6(a)(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) 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. [Click here to view image.](#)

UNIFORM ASSIGNMENT OF PAYMENT FOR SERVICES DUE TO AN ATTORNEY UNDER RULE 13

HISTORY: [As amended by order filed March 5, 2013.][As amended by order filed June 27, 2012, effective July 1, 2012; and by order filed February 20, 2013, effective April 1, 2013.][As amended by order filed February 6, 2013, effective July 1, 2013.][As amended by order filed February 6, 2013, effective July 1, 2013; by order filed September 4, 2013, effective January 1, 2014.][As adopted by order filed June 1, 2004, effective July 1, 2004; and amended by order filed September 2, 2004; by order filed September 2, 2005, effective October 1, 2005; by order filed June 12, 2006, effective June 12, 2006; by order filed February 27, 2008, effective February 27, 2008; by order filed October 9, 2008, effective July 1, 2008; by order filed July 13, 2011, effective July 13, 2011; by order filed June 27, 2012.]

NOTES: Compiler's Notes.

In its order dated February 6, 2013, the Supreme Court provided that: "On March 8, 2010, the Court filed an order adopting Rule 13A on a provisional basis from May 1, 2010, through August 1, 2011. Rule 13A authorized the Administrative Office of the Courts to establish a system for the electronic submission of certain fee claims associated with the representation of indigent litigants and also authorized the Director of the Administrative Office of the Courts to establish a schedule of phased implementation of the system.

"On May 10, 2012, the Court filed an order noting that the Administrative Office of the Courts had implemented the electronic-submission system authorized by the rule, and that the system was being used on a routine basis. The Court also announced its intention to undertake an internal review of the electronic-submission system, with a view toward adopting a permanent version of Rule 13A, and extending the effective date of provisional Rule 13A until further order of the Court.

"After completing its internal review of the electronic-submission system, the Administrative Office of the Courts proposed that the electronic-submission system be made mandatory for attorneys and interpreters, effective July 1, 2013, and that experts, investigators, and other support service providers continue to submit claims in writing after that date. To accomplish this, the AOC proposed amendments to *Tenn. Sup. Ct. R. 13*, 15, and 42, and the deletion of *Tenn. Sup. Ct. R. 13A* (as obsolete).

"On October 23, 2012, the Court filed an order publishing the AOC's proposed amendments and soliciting written comments concerning the amendments from the bench, the bar, interested organizations, and the public. The deadline for submitting written comments was December 14, 2012.

"After due consideration, the Court hereby amends *Tenn. Sup. Ct. R. 13*, *Tenn. Sup. Ct. R. 15*, and *Tenn. Sup. Ct. R. 42* as set out in the attached appendices to this order [M2010-00520-SC-RL2-RL]. The effective date of these amendments is July 1, 2013.

"With the adoption of the foregoing amendments, *Tenn. Sup. Ct. R. 13A* is rendered obsolete. Consequently *Tenn. Sup. Ct. R. 13A* is hereby repealed, effective July 1, 2013."

In its order filed September 4, 2013, the Supreme Court added Rule 13, § 6(a)(8), effective January 1, 2014.

_____ _____ _____ Court County Tennessee	UNIFORM AFFIDAVIT OF INDIGENCY page 1 of 2	Case Number _____
_____ vs. _____		

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

PART I

1. Full Name: _____
2. Social Security No.: _____
3. Any other names ever used: _____
4. Address: _____
5. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____
6. Are you working anywhere? Yes () No () Where _____
7. How much do you make? _____ (weekly, monthly, etc.)
8. Birth date: _____
9. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)? Yes () No ()
 What is its value? _____ (weekly, monthly, etc.)
10. Do you own any property (house, car, bank acct., etc.): Yes () No ()
 What is its value? _____
- Are you, or your family, going to be able to post your bond? Yes () No ()
- Are you, or your family, going to hire a private attorney? Yes () No ()
13. Are you now in custody? Yes () No ()
 If so, how long have you been in custody? _____
(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)

PART II

14. Names & ages of all dependents: _____ relationship _____
 _____ relationship _____
 _____ relationship _____

15. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:
 Name _____
 Address _____

16. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, worker's compensation, etc.):
 \$ _____ per _____ from _____
 \$ _____ per _____ from _____
 \$ _____ per _____ from _____

- All money available to me from any source:
- A. Cash _____
 - B. Checking, Saving, or CD Account(s)-give bank, acct. no., balance _____
 - C. Debts owed me _____
 - D. Credit Card(s)-give acct. no., balance, credit limit, and type (Visa, Mastercard, American Express, etc.) _____

_____ Court _____ County _____ Tennessee	UNIFORM AFFIDAVIT OF INDIGENCY page 2 of 2	Case Number _____
_____ vs. _____		

E. Other _____

18. All vehicles/vessels owned by me, solely or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip., boats etc.):

_____	value \$	_____	amt. owed	_____
_____	value \$	_____	amt. owed	_____
_____	value \$	_____	amt. owed	_____

19. All real estate owned by me, solely or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):

_____	value \$	_____	amt. owed	_____
_____	value \$	_____	amt. owed	_____

20. All assets or property not already listed owned within the last six months or expected in the future:

_____	value \$	_____	amt. owed	_____
_____	value \$	_____	amt. owed	_____

21. The last income tax return I filed was for the year _____ and it reflected a net income of \$ _____.
I will file a copy of same within one week if required.

22. I am out of jail on bond of \$ _____ made by _____ . The money to make bond, \$ _____ was paid by _____.

PART III

23. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.

24. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.

25. I understand that it is a Class A misdemeanor for which I can be sentenced to jail for up to 11 months 29 days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

This _____ day of _____, _____

 Defendant

Sworn to and Subscribed before me this _____ day of _____, _____.

Clerk

Judge

**2014 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES
AND THE DISTRICT OF COLUMBIA**

Persons in family/household	Poverty guideline
For families/households with more than 8 persons, add \$4,060 for each additional person.	
1	\$11,670
2	15,730
3	19,790
4	23,850
5	27,910
6	31,970
7	36,030
8	40,090

RELEVANT CODE SECTIONS regarding APPOINTMENT OF COUNSEL

Title 40 Criminal Procedure
Chapter 14 Rights of Defendants
Part 2 Counsel for Indigents

Tenn. Code Ann. § 40-14-202 (2014)

40-14-202. Appointment by court.

(a) In all felony cases, if the accused is not represented by counsel and the court determines by the manner provided in subsection (b) that the accused is an indigent person who has not competently waived the right to counsel, the court shall appoint to represent the accused either the public defender, if there is one for the county, or, in the absence of a public defender, a competent attorney licensed in this state. The court may call upon any legal aid agency operating in conjunction with an accredited college of law to recommend attorneys for appointment under this part. The court may, upon its own motion or upon application of counsel appointed under this section, name additional attorneys to aid and assist in the defense. Each appointment of counsel shall be denoted by an appropriate entry upon the minutes of the court, which shall state the name of counsel and the date of counsel's appointment, but failure of the court to make such a minute entry shall not in any way invalidate the proceeding if an attorney was in fact appointed. Upon the appointment of an attorney under this section, no further proceeding shall be had until the attorney so appointed has had sufficient opportunity to prepare the case. If the court should determine that the accused is not an indigent person, the court shall then advise the accused with respect to the accused's right to counsel and afford the accused an opportunity to acquire counsel.

(b) Whenever an accused informs the court that the accused is financially unable to obtain the assistance of counsel, it is the duty of the court to conduct a full and complete hearing as to the financial ability of the accused to obtain the assistance of counsel and, thereafter, make a finding as to the indigency of the accused. All statements made by the accused seeking the appointment of counsel shall be by sworn testimony in open court or written affidavit sworn to before the judge.

(c) When making a finding as to the indigency of an accused, the court shall take into consideration:

(1) The nature of the services to be rendered;

(2) The usual and customary charges of an attorney in the community for rendering like or similar services;

(3) The income of the accused regardless of source;

(4) The poverty level income guidelines compiled and published by the United States department of labor;

(5) The ownership or equity in any real or personal property;

(6) The amount of the appearance or appeal bond, whether the party has been able to obtain release by making bond, and, if the party obtained release by making bond, the amount of money paid and the source of the money; and

(7) Any other circumstances presented to the court which are relevant to the issue of indigency.

(d) If a social service agency services the criminal justice system of the judicial district, and the court has reasonable cause to believe the accused has the financial resources to employ counsel, the court shall order the agency to conduct an investigation into the financial affairs of the accused and report its findings directly to the court. The court shall consider the contents of the agency's report in making its determination and the report shall be made a part of the record in the cause.

(e) If the court appoints counsel to represent an accused in a felony case under this section or in a misdemeanor case as required by law, but finds the accused is financially able to defray a portion or all of the cost of the accused's representation, the court shall enter an order directing the party to pay into the registry of the clerk of the court any sum that the court determines the accused is able to pay. The sum shall be subject to execution as any other judgment and may also be made a condition of a discharge from probation. 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 of the accused.

(f) The clerk of the court shall collect all moneys paid by an accused pursuant to this section. When the accused fails to comply with the orders of the court, the clerk shall notify the court of the accused's failure to comply.

At the conclusion of the proceedings in the trial court, the court shall order the clerk to pay to the administrative office of the courts any funds that the clerk collected from the accused. The clerk of the court shall receive a commission of five percent (5%) of the moneys collected for the clerk's services in collecting, handling and making payment pursuant to the order of the court; provided, that in counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, the commission shall be ten percent (10%).

(g) If a defendant has been ordered to pay all or a portion of the accused's representation pursuant to subsection (d), and if the administrative office of the courts receives funds paid pursuant to subsection (f) that are greater than the total amount which appointed counsel has claimed and has been reimbursed pursuant to Supreme Court Rule 13, then any such excess funds shall be paid to the appointed attorney.

(h) No court shall appoint a member of the general assembly as counsel for an indigent defendant unless the judge of the court certifies that no other equally competent attorney is available to represent the defendant. If the judge so certifies, it shall not be considered a conflict of interest for the member to represent the defendant or to be compensated for the representation in the same manner and amount as other court appointed attorneys.

(i) (1) Every accused who informs the court that the accused is financially unable to obtain the assistance of counsel shall be required to complete the uniform affidavit of indigency.

(2) It is a Class A misdemeanor for any person to intentionally or knowingly misrepresent, falsify or withhold any information required by an affidavit of indigency.

(j) Before and during the trial of a criminal matter, the cover sheets that reflect the total fees and expenses paid to defense counsel and that reflect the total amount paid for expert services from public funds for the use in representing an indigent criminal defendant or prosecuting a criminal defendant are a public record. In addition, a record of the total amount paid to an expert from public funds is a public record if the expert has offered evidence and is known to the public because of testimony on the record. Before and during the trial of a criminal matter, detailed attorney fees and expense claims, motions and orders dealing with the authorization of expert services and detailed time sheets of undisclosed experts shall be sealed and unavailable for public inspection.

Title 8 Public Officers And Employees
Chapter 14 Public Defenders
Part 2 District Public Defenders and Investigators

Tenn. Code Ann. § 8-14-205 (2014)

8-14-205. Determination of indigency -- Appointment of counsel -- Multiple defendants -- Law students.

(a) When any person appears without counsel before any court of this state exercising original jurisdiction (whether magistrate, general sessions, municipal, juvenile, circuit, criminal or any court empowered to deprive the person of liberty) upon a criminal prosecution or juvenile delinquency proceeding involving a possible deprivation of liberty, the court shall inquire whether such person is financially able to employ counsel. If the person claims to be without such means, the court shall examine such person and any witnesses the indigent person or the court may call and proceed to determine whether the person is indigent. The determination shall not be based alone on the person's ability to make a bail bond, but the court shall consider income, property, obligations, the number and ages of dependents and any other matters deemed pertinent.

(b) In all habeas corpus and post-conviction proceedings, the court having original jurisdiction of the matter shall determine the question of the petitioner's indigency if such is claimed.

(c) In every case arising under this section, the court's determination of indigency or nonindigency shall be reduced to writing and signed by the court and filed with the papers of the cause. If the court is one of record, the court's determination shall also be entered upon its official minutes.

(d) If the court determines that the person is indigent, as defined in § 8-14-201, and the person has not waived the right to counsel, the court shall make and sign an order appointing the district public defender, or such other appointed counsel as provided by law, to represent the person. The original of the order shall be filed with the papers of the cause, and if the court is one of record, the order shall also be entered upon its official minutes.

(1) If the court appoints the district public defender to represent an accused in any proceeding under this section, but finds the accused is financially able to defray a portion or all the cost to the state of representation by the public defender, then the court shall enter an order directing the party to pay into the registry of the clerk of such court such sum of money as the court determines the accused is able to pay. Such sum shall be subject to

execution as any other judgment and may also be made a condition of discharge from probation. Such sum as ordered by the court shall be paid by the accused independently and separately from any fines and costs associated with the cause, and such moneys paid by the accused and collected by the clerk of the court pursuant to this section shall be collected independently and separately from any fines and costs associated with the cause and be applied directly to the sum ordered by the court to be paid under this section. The court may provide for payments to be made at intervals, which the court shall establish, and upon such terms and conditions as are fair and just. The court may also modify its order when there has been a change in the circumstances of the accused.

(2) The clerk of the court shall collect all moneys paid by an accused pursuant to this section. When the accused fails to comply with the orders of the court, the clerk shall notify the court of the accused's failure to comply. The clerk shall, at the end of each month, pay to, and forward all payments received pursuant to this section to the office of the executive director of the district public defenders conference. The clerk of the court shall receive a commission of five percent (5%) of all moneys collected pursuant to the order of the court; provided, that in counties having a population of more than seven hundred thousand (700,000), according to the 1990 federal census or any subsequent federal census, such commission shall be ten percent (10%).

(e) In any case or proceeding wherein there is more than one (1) indigent person accused, one (1) such person shall be represented by the district public defender's office, and the court shall appoint an attorney to represent such other indigent persons. Such other indigent persons may also be represented by the district public defender's office; provided, that the court makes an affirmative finding prior to the appointment that no conflict of interest exists and it appears there is good cause to believe no conflict of interest is likely to arise. The original of the order shall be filed with the papers of the cause, and if the court is one of record, the order shall also be entered upon its official minutes.

(f) In any case when the trial court is of the opinion that proper representation of an indigent person or persons makes it necessary to do so, the court may for that purpose appoint one (1) or more senior law students actively participating in a legal aid clinic operated by an approved law school located in the judicial district, in accordance with Tennessee Supreme Court Rule 7. The legal aid clinic shall be notified promptly of the appointment and shall be furnished a copy of the order of appointment. The original of the order shall be filed with the papers of the cause, and if the court is one of record, the order shall also be entered upon its official minutes.

(g) All attorneys and law students appointed as provided in subsections (e) and (f) shall be paid by the state pursuant to §§ 40-14-207 and 40-14-208.

(h) Upon the appointment of the district public defender, and/or an attorney pursuant to subsections (e) and (f), no further proceedings shall be had in the case until such counsel has had reasonably sufficient time and opportunity to prepare the case for trial. District public defenders shall be authorized access to query state and federal criminal records history information as the duties of their office may require.

(i) If the court determines that the person accused or proceeded against in any criminal prosecution or other proceeding involving a possible deprivation of liberty, or the person filing a habeas corpus or other post-conviction proceeding is not an indigent person, the court shall advise such person with respect to right to counsel and afford such person a reasonable time, to be fixed by the court, and opportunity to secure counsel and shall stay further proceedings until counsel so obtained has had reasonable time and opportunity to prepare the case for trial.

HISTORY: Acts 1989, ch. 588, § 5; 1990, ch. 751, § 3; 1991, ch. 345, §§ 3, 4; 1995, ch. 456, § 5; 1996, ch. 610, § 4; 1999, ch. 165, § 5.

Title 40 Criminal Procedure
Chapter 14 Rights of Defendants
Part 1 General Provisions

Tenn. Code Ann. § 40-14-103 (2014)

40-14-103. Right to appointed counsel -- Administrative fees.

(a) If unable to employ counsel, the defendant is entitled to have counsel appointed by the court.

(b) (1) A defendant, who is provided with court-appointed counsel, including a defendant in a termination of parental rights case, shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The administrative fee shall be assessed only one time per case and shall be waived or reduced by the court upon a finding that the defendant lacks financial resources sufficient to pay the fifty-dollar fee. The fee may be increased by the court to an amount not in excess of two hundred dollars (\$200) upon a finding that the defendant possesses sufficient financial resources to pay the fee in the increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, however, that the fee shall be paid prior to disposition of the case or within two (2) weeks following appointment of counsel, whichever occurs first. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee assessed by the court has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, however, that the defendant's willful failure to pay the fee may be considered by the court as an enhancement factor when imposing sentence if the defendant is found guilty of criminal conduct, and may also be considered by the court as evidence of the defendant's financial responsibility, or lack thereof, in a determination of the best interest of the child.

(2) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each dollar to the state treasurer for deposit in the state's general fund.

(3) If the administrative fee is not paid prior to disposition of the case, then

the fee shall be collected in the same manner as costs are collected; provided, however, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by the defendant, shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the defendant are dismissed.

(4) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the administrative director of the courts. The report shall indicate the following:

(A) Number of defendants for whom the court appointed counsel;

(B) Number of defendants for whom the court waived the administrative fee;

(C) Number of defendants from whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from the administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer.

HISTORY: Code 1858, § 5206; Shan., § 7170; Code 1932, § 11734; T.C.A. (orig. ed.), § 40-2003; Acts 1997, ch. 547, § 1; 2010, ch. 1003, §§ 1, 2.

Title 40 Criminal Procedure
Chapter 14 Rights of Defendants
Part 2 Counsel for Indigents

Tenn. Code Ann. § 40-14-207 (2014)

40-14-207. Compensation -- Necessary services for indigent defendants.

(a) Other than public defenders and post-conviction defenders, attorneys appointed under this part shall be entitled to reasonable compensation for their services prior to trial, at trial, and during the appeal of the cause and shall be entitled to reimbursement for their reasonable and necessary expenses in accordance with the rules of the supreme court.

(b) In capital cases where the defendant has been found to be indigent by the court of record having jurisdiction of the case, 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. If that 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 reimbursement of reasonable and necessary expenses by the administrative director of the courts as authorized by this part and rules promulgated thereunder by the supreme court.

HISTORY: Acts 1965, ch. 217, § 10; 1973, ch. 248, § 1; T.C.A., § 40-2023; Acts 1984, ch. 925, § 1; 1986, ch. 878, §§ 3, 4; 1988, ch. 996, §§ 1-3; 1992, ch. 965, § 2; 1993, ch. 66, §§ 51, 52; 2005, ch. 104, § 1.

Title 40 Criminal Procedure
Chapter 14 Rights of Defendants
Part 2 Counsel for Indigents

Tenn. Code Ann. § 40-14-208 (2014)

40-14-208. Applications for reimbursement or compensation.

(a) Each attorney seeking reimbursement or compensation under this part shall file an application with the trial court stating in detail the nature and amount of the expenses claimed, supporting the claim with receipts showing payment of the expenses and stating the nature and extent of services performed including those in connection with any preliminary hearing.

(b) Any attorney rendering services or incurring expenses incident to any appeal and seeking compensation or reimbursement therefor shall file an application with the appellate court stating in detail the matters required in applications to trial courts and any other information as the rules of the court require.

(c) All applications for compensation or reimbursement shall also state any payments made or to be made to the applicant by or on behalf of the accused, and the court, in fixing compensation, shall take those payments into account.

(d) A certified copy of the court order fixing any compensation or approving any expenses under this part, along with a true copy of the attorney's application, shall be forwarded to the administrative director of the courts, who shall audit and review the order and application, and upon finding payment to be in order, process the payment of compensation and expenses out of money appropriated for that purpose.

HISTORY: Acts 1965, ch. 217, §§ 11-14; T.C.A., §§ 40-2024 -- 40-2027; Acts 1993, ch. 66, § 53.

Title 37 Juveniles
Chapter 1 Juvenile Courts and Proceedings
Part 1 General Provisions

Tenn. Code Ann. § 37-1-126 (2014)

37-1-126. Right to counsel or guardian ad litem -- Administrative fee.

(a) (1) A child is entitled to representation by legal counsel at all stages of any delinquency proceedings or proceedings alleging unruly conduct that place the child in jeopardy of being removed from the home pursuant to § 37-1-132(b) and is entitled to a guardian ad litem for proceedings alleging a child to be dependent and neglected or abused.

(2) (A) An adult is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving:

(i) Child abuse prosecutions pursuant to §§ 37-1-412 and 39-15-401;

(ii) Contributing to the delinquency or unruly behavior of a child pursuant to § 37-1-156 or contributing to the dependency and neglect of a child pursuant to § 37-1-157;

(iii) Violation of compulsory school attendance pursuant to §§ 49-6-3007 and 49-6-3009; or

(iv) Criminal contempt.

(B) A parent is entitled to representation by legal counsel at all stages of any proceeding under this part in proceedings involving:

(i) Abuse, dependency or neglect pursuant to § 37-1-102; or

(ii) Termination of parental rights pursuant to § 36-1-113.

(3) If the person is indigent, the court shall provide counsel for the indigent person. If a person appears without counsel, the court shall ascertain whether the person knows of the right to counsel and of the right to be provided with counsel by the court if the person is indigent. The court may continue the proceeding to enable a person to obtain counsel and shall provide counsel for an unrepresented indigent person upon request.

(4) In all delinquency hearings or in unruly hearings in which the child may

be in jeopardy of being removed from the home as specified in § 37-1-132(b), counsel must be provided for a child not represented by the child's parent, guardian, guardian ad litem or custodian or where the child's interests conflict with the parent, guardian, custodian or guardian ad litem. If the interest of two (2) or more persons conflict, separate counsel may be provided for each of them.

(b) A person is indigent if:

(1) That person does not possess sufficient means to pay reasonable compensation for the services of a competent attorney or guardian ad litem. In determining indigency, the court shall consider the financial resources of the child and the child's parents, legal custodians or guardians; or

(2) In the case of a child, if the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation but refuse to do so timely, the court may make written findings determining this as indigency; provided, the court shall assess the administrative fee and costs pursuant to § 37-1-150(g).

(c) (1) A child who is provided with court-appointed counsel pursuant to this section, the child's parents, legal custodians or guardians, or any adult defendant or respondent who is provided with court-appointed counsel pursuant to this section shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The parents, legal custodians or guardians of a child who is appointed a guardian ad litem shall be assessed by the court an administrative fee as provided in this subdivision (c)(1).

(2) The administrative fee shall be assessed only one (1) time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents, legal custodians or guardians lack financial resources sufficient to pay the fee in such amount. In cases where a guardian ad litem is appointed, the financial resources of the child shall not be considered. The fee may be increased by the court to an amount not in excess of two hundred dollars (\$200) upon a finding that the child, the child's parents, legal custodians or guardians, or an adult defendant or respondent possess sufficient financial resources to pay the fee in such increased amount. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, that the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever first occurs. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. Failure to pay the administrative fee assessed by the court shall not reduce or in any way

affect the rendering of services by court-appointed counsel; provided, that willful failure to pay such fee may be weighed by the court when determining appropriate disposition of the case.

(3) The administrative fee shall be separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

(4) If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, that upon disposition of the case, moneys paid to the clerk, including any cash bond posted by or on behalf of the child or adult, shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the party are dismissed. In cases where a guardian ad litem is appointed, the court shall have discretion to waive the administrative fee if the case is dismissed.

(5) As part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the Tennessee administrative director of the courts. The report shall indicate the following:

(A) Number of children and adults for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court appointed a guardian ad litem pursuant to § 37-1-149;

(C) Number of children and adults for whom the court appointed counsel and waived the administrative fee;

(D) Number of children for whom the court appointed a guardian ad litem and waived the administrative fee;

(E) Number of children and adults from, or on behalf of, whom the clerk collected administrative fees;

(F) Total amount of commissions retained by the clerk from such

administrative fees; and

(G) Total amount of administrative fees forwarded by the clerk to the state treasurer.

HISTORY: Acts 1970, ch. 600, § 26; 1980, ch. 796, § 2; T.C.A., § 37-226; Acts 1997, ch. 547, § 2; 2008, ch. 1084, §§ 1-4; 2009, ch. 417, § 1; 2012, ch. 857, §§ 1-5.

Title 37 Juveniles
Chapter 1 Juvenile Courts and Proceedings
Part 1 General Provisions

Tenn. Code Ann. § 37-1-150 (2014)

37-1-150. Cost and expense for care of child.

(a) The following expenses may be a charge upon the funds of the county upon certification thereof by the court:

(1) The cost of medical and other examinations and treatment of a child that is ordered by the court. The cost of outpatient mental health evaluations under § 37-1-128(e)(1) shall be the responsibility of the state;

(2) Reasonable compensation for services and related expenses of counsel appointed by the court for a party; provided, however, that in the case of indigent persons appointed counsel pursuant to § 37-1-126, the state, through the administrative office of the courts, shall pay such compensation. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to this subdivision (a)(2). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(2). The court may adopt such other rules related to this subdivision (a)(2) as it deems appropriate in the public interest;

(3) Reasonable compensation for a guardian ad litem, except that in the case of indigent persons, the state, through the administrative office of the courts, shall pay for the guardian ad litem required by § 37-1-149 for proceedings alleging a child to be dependent and neglected or abused. The supreme court shall prescribe by rule the nature of the expense for which compensation may be allowed hereunder, and such limitations and conditions for such compensation as it deems appropriate, subject to the provisions of this subdivision (a)(3). Such rules shall specify the form and content of applications for compensation under this subdivision (a)(3). The court may adopt such other rules related to this subdivision (a)(3) as it deems appropriate in the public interest;

(4) The cost of any preadjudicatory placement of a child pursuant to §§ 37-1-114 and 37-1-116, including necessary transportation of the

child to such placement. A child alleged to be in violation of the conditions of home placement or charged with the commission of an offense that would be a felony if committed by an adult and eligible for secure detention as provided by § 37-1-114(c) who is taken into custody in a county that does not operate a secure juvenile detention facility may, with the approval of the court having jurisdiction in the matter, be transported to and from the nearest such facility in this state; the cost of such transportation and placement shall be paid by the state subject to appropriations to the commission on children and youth for juvenile court services. Payment may also be made from available federal funding;

(5) The expense of service of summons, notices, subpoenas, travel expense of witnesses, except as provided in subsection (b), transportation of the child, and other like expenses incurred in the proceedings under this part; and

(6) The reasonable cost of secretarial services for the court in performing its duties as a juvenile court.

(b) (1) The cost of transporting a child who has been committed to a state correctional institution on an offense that would be a felony if committed by an adult shall be paid by the state. The cost of transportation of a child for mental health examination or evaluation when the examination or evaluation has been ordered by the juvenile court judge for a child charged with commission of an offense that would be a felony if committed by an adult shall be paid by the county.

(2) The cost of an inpatient mental health examination or evaluation ordered by the juvenile court judge for a child charged with commission of an offense that would be a felony if committed by an adult, and the cost incidental to the examination or evaluation, shall be paid by the city or county.

(c) The cost of transporting a child from another state for an offense that would be a felony if the child were an adult shall be paid by the state; otherwise, the city or county will bear the cost.

(d) (1) If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subdivisions (a)(1)-(5), the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile

court for remittance to the person to whom compensation is due or, if the costs and expenses have been paid by the county, to the appropriate officer of the county.

(2) If, after due notice to the parents, legal custodians or guardians, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses of the mental evaluation or examination of the child, which have been paid by the city or county pursuant to subsection (b), the court may order them to pay the costs and prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the state, to the appropriate officer of the state.

(e) (1) [Deleted by 2012 amendment.]

(2) [Deleted by 2012 amendment.]

(3) Attorneys appointed hereunder, other than public defenders, are entitled to reasonable compensation for their services, both prior to and at the hearing of the cause, and are entitled to reimbursement for their reasonable and necessary expenses in accordance with the rules of the supreme court.

(4) Each attorney seeking reimbursement or compensation hereunder shall file an application with the juvenile court, stating in detail the nature and amount of the expenses claimed, supporting such claim with receipts showing payment thereof and stating the nature and extent of the attorney's services, including those in connection with any preliminary hearing.

(f) [Deleted by 2012 amendment.]

(g) Costs for proceedings under this title or the costs of the care or treatment of any child that is ordered by the court shall be paid by the state only when specifically authorized by this title or other provisions of law.

(h) (1) In proceedings where the child is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel or a guardian ad litem to represent the child, but finds the child, the child's parents, legal custodians or guardians are financially able to defray a portion or all of the cost of the child's representation the court shall enter an

order directing the child, child's parents or legal custodians or guardians to pay into the registry of the clerk of the court any sum that the court determines the child, child's parents or legal custodians or guardians is able to pay.

(2) In proceedings where an adult is determined to be indigent pursuant to § 37-1-126 and the court appoints counsel to represent the adult and finds the adult financially able to defray a portion or all of the cost of the adult's representation, the court shall enter an order directing the adult to pay into the registry of the clerk of the court any sum that the court determines the adult is able to pay.

(3) 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.

(4) The clerk of the court shall collect all moneys paid pursuant to this subsection (h). The clerk shall notify the court of any failure to comply with the court's order. At the conclusion of the proceedings, the court shall order the clerk to pay to the administrative office of the courts any funds that the clerk collected. The clerk of the court shall receive a commission of five percent (5%) of the moneys collected for the clerk's services in collecting, handling and making payment pursuant to the order of the court.

(5) If the administrative office of the courts receives funds greater than the total amount which appointed counsel or the guardian ad litem has claimed and has been reimbursed pursuant to Supreme Court Rule 13, then any such excess funds shall be paid to the appointed attorney.

HISTORY: Acts 1970, ch. 600, § 49; 1971, ch. 107, § 1; 1972, ch. 755, § 1; 1973, ch. 258, § 1; 1974, ch. 483, § 1; 1977, ch. 482, §§ 7, 8; 1980, ch. 796, § 3; 1981, ch. 316, § 5; 1983, ch. 408, §§ 4, 5; T.C.A., § 37-249; Acts 1984, ch. 977, § 1; 1985, ch. 59, § 1; 1986, ch. 878, § 5; 1991, ch. 491, §§ 1, 2; 1993, ch. 66, §§ 49, 50; 1996, ch. 1079, §§ 73, 103; 1999, ch. 508, § 9; 2001, ch. 368, §§ 1, 2; 2009, ch. 549, §§ 3-5; 2012, ch. 857, §§ 6-10.

Procedure for Approval for Expert/Investigator Services

Supreme Court Rule 13, section 5 governs the approval process for expert and/or investigative services. Below are some of the highlights from that section:

- **Section (5)(a)(2)**- Expert and/or investigative Services in non-capital post-conviction proceedings will **not** be authorized or approved
- **Section (5)(b)(1)**- Every effort should 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
- **Section (5)(b)** sets out all requirements for the motion for services.
- If those requirements are met, the court must conduct an ex parte hearing on the motion.
- Funding shall be authorized if the court determines there is a particularized need for the requested services and the hourly rate is comparable to rates charged for similar services
- "Particularized need" is defined in Section 5(c)(2) and (3).
- Rates for some experts/investigators are set in the rule under section 5(d).

Once the motion and order are approved by the court, the attorney must still seek prior approval from the director prior to the services being rendered.

The motion and/or order may be faxed to the Administrative Office of the Courts to Attn: David Byrne or Diane Stinson at 615/253-0017.

Procedure for Approval of Necessary Expenses

Expenses are covered under section 4 of Supreme Court Rule 13. Prior approval by the AOC is required for any expense requested that is not listed in section 4(a), such as court reporter services for attendance at hearings other than criminal/circuit court criminal cases, or for transcription of preliminary hearings, etc. This is covered by section 4(b) of the Rule.

The motion and order must be submitted to the director for prior approval before the expenses are incurred.

The procedure for the approval is the same as is set out above for expert/investigator services.