

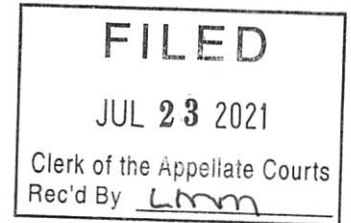


SHERRARD
ROE
VOIGT
HARBISON

Amy Rao Mohan

Direct Dial (615) 742-4571
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July 23, 2021



ADM2021-00237

BY EMAIL & US MAIL

James M. Hivner, Clerk
RE: Tenn. Sup. Ct. R. 21, section 3.01
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407
appellatecourclerk@tncourts.gov

**Re: In support of Petition to Amend Rule 13; Docket Nos. ADM2021-00308,
ADM2021-00237**

Dear Mr. Hivner:

Many of my partners and I have had the opportunity to work *pro bono* on a number of criminal, habeas, and clemency matters in conjunction with other state and federal attorneys. Phil Cramer and I worked on a case a couple years ago with the Tennessee Office of the Post-Conviction Defender and saw firsthand the significant and crucial need for experts and investigative services in this meaningful work.

As illustrated in the petitions, the necessity of this expert funding to establish a defense or claims of constitutional violations is essential to these indigent defendants and the fairness and equity of our legal system hinges on the proper application of Rule 13. I understand from our colleagues in the criminal defense bar and specifically at the Post-Conviction Office that at times, the expenditure of expert expenses, approved and ordered by a court, is later overruled by administrative entities. This is a detrimental and sometimes even fatal blow to an indigent defendant's case.

In turn, my partners and I support the recent petitions filed by the Tennessee Office of the Post-Conviction Defender and other criminal defense organizations to amend Rule 13 to ensure that indigent defendants receive the crucial funding for expert and investigative services and that Rule 13 clarify that an indigent client can receive funding for expert and investigative services as soon as the criminal proceedings against him or her are initiated. We must ensure as fellow members of the bar that indigent clients have the tools necessary to defend themselves or in the case of capital petitioners, to challenge their convictions and sentence.

James M. Hivner, Clerk
July 19, 2021
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We appreciate your consideration of the petitions regarding the Rule 13 amendments and fully support its adoption.

Very truly yours,

A handwritten signature in cursive script that reads "Amy Rao Mohan".

Amy Rao Mohan

ARM/sjd

appellatecourtclerk - R. 13 Comment

From: Tim Irwin <Tim.Irwin@knoxcounty.org>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 7/23/2021 12:47 PM
Subject: R. 13 Comment

It is imperative we amend Rule 13 to cover experts and investigators in Juvenile Court delinquent proceedings, termination of parental right cases and particularly transfer hearings. In Re Gault requires the juveniles have the same constitutional protections that adults enjoy. Children charged with murder are facing up to fifty-one (51) years if transferred to adult court. Appointed council in these cases must be able to have competent psychiatric evaluations to determine if the accused child is committable to an institution for the insane or mentally retarded. It is often necessary for an expert to render an opinion on the availability of the treatment and care, remaining for the accused in the juvenile system. Finally, appointed counsel must be able to use an investigator for the probable cause phase of the hearing. They are unable to investigate themselves since they could, "likely become a witness."

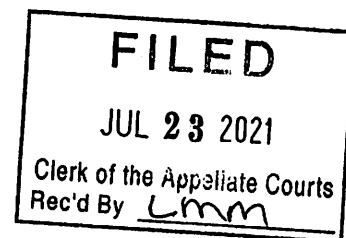
Ceasing to pay for these services has created a delay resulting in a large number of children (often detained) awaiting a transfer hearing in my county (Knox). I am strongly in support of the proposed changes to Rule 13 submitted by The Tennessee Association of Defense Lawyers.

Sincerely,

Judge Timothy E. Irwin

Timothy E. Irwin, Judge

Knox County Juvenile Court
3323 Division Street
Knoxville, Tennessee 37919
Office: (865) 215-6475
Fax: (865) 215-6546
tim.irwin@knoxcounty.org



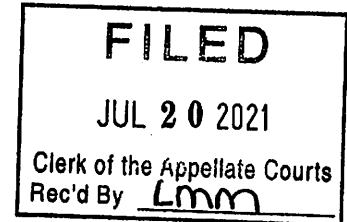
ADM2021-00237

PAMELA AUBLE, PH.D., ABPP-CN

Clinical and Forensic Neuropsychology, Personality Assessment
2200 21st Avenue South, Suite 401, Nashville, TN 37212
(615) 340-4686 cell (615) 308-5823 fax (615) 750-5796

July 20, 2021

James Hivner, Clerk
Re: Tenn. Sup. Ct. R. 13, 5(a)(1) and 5(d)(1)
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407



ADM2021-00237

Re: Docket No. ADM2021-00237

To Whom it May Concern:

I am a forensic neuropsychologist who has been doing evaluations on criminal defendants in Tennessee for roughly 35 years.

I am writing in support of the proposed changes to Rule 13 in which the Rule is modified to include all of the critical stages of a criminal prosecution. The modification would also include the trial and direct appeal of termination of parental rights, juvenile delinquency, and juvenile transfer hearings. I also support the change that "compensation for individuals or entities providing the following services shall not exceed the following maximum hourly rates, unless in its sound discretion the presiding court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence."

I support the change to include all of the critical stages of a criminal prosecution because there are cases in which an early investigation or evaluation of a defendant can help to determine whether there is evidence that could either mitigate the offense or whether there is evidence that the defendant has not been accurate in their description of the offense or their reported mental state. Ultimately, an early evaluation could save the courts and the attorneys time and would help in resolving the case; thus, saving money in the long run. Delaying access to the services drives up expenses.

I support the change to include juvenile cases in Rule 13, particularly juvenile transfer hearings. Having worked as an expert evaluating a child for a transfer hearing, I understand that the basis for the decision to keep the child in the juvenile system can be that the child is committable, or, if not committable whether the child has any number of factors which could make transfer inappropriate. These factors include whether the child has received treatment or could benefit from treatment and whether the child can be rehabilitated. Whether a child suffers from a mental illness or developmental disability is a question that needs to be answered by an expert in mental health rather than a lay witness. Whether a child is a good

candidate for treatment or rehabilitation also needs an evaluation by an expert who understands child psychology and who has personally worked with the child to make such a determination.

Finally, I support the change to make it possible for expert services to exceed the published maximum hourly rates upon the finding that there are extraordinary circumstances. I note that the maximum hourly rates have not increased in more than twenty years, making it increasingly difficult or impossible for indigent defendants to find available and qualified experts. I have accepted the AOC rate for psychological services since its inception, though I am paid more per hour in all other cases. Increasingly, if there are providers willing to accept the rates, they are going to be likely to be inexperienced or poorly qualified because experienced and highly qualified experts will have their schedules full with examinees who are paying twice as much per hour or more.

Sincerely,

A handwritten signature in black ink that reads "Pamela Auble". The signature is written in a cursive, slightly slanted style.

Pamela Auble, Ph.D., ABPP
Licensed Psychologist, Health Service Provider
Board Certified in Clinical Neuropsychology