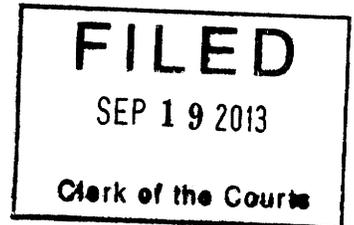


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE RULE 13, SECTION 2(d) and (e),
RULES OF THE TENNESSEE SUPREME COURT

No. ADM2013-0211



ORDER

Rule 13, Rules of the Tennessee Supreme Court, establishes a system of providing indigent defense services to parties constitutionally and statutorily entitled to counsel, as well as the procedures for compensating attorneys and others providing those services. Section 2 of the Rule governs the compensation of counsel in non-capital cases and includes maximum rates of compensation for the various types of cases listed in Section 2. After due consideration, the Court has decided to amend Section 2(d) and (e) of Rule 13 to increase the maximum compensation allowed for non-capital cases in which the defendant is charged with first-degree murder or with a Class A or B felony.

Accordingly, the Court hereby amends Rule 13, Section 2(d) and (e) as set out in the Appendix to this order. The amendments shall take effect on January 1, 2014, and shall apply to any covered case in which counsel is appointed on or after that date. The increase in the allowable maximum compensation for the cases covered by the amendments is based upon the current status of the Indigent Defense Fund administered by the Administrative Office of the Courts; the Court, as necessary, will reevaluate the continuing financial viability of the increase in light of future budgetary considerations.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

[Tenn. Sup. Ct. R. 13, § 2(d) and (e) are amended as indicated below by underlining (new text) and ~~overstriking~~ (deleted text).]

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

Section 1. Right to counsel and procedure for appointment of 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) (A) One thousand, five hundred dollars (\$1,500) for: ~~(A) C~~ cases in trial courts in which the defendant is charged with a felony other than first-degree murder or a Class A or B felony;

(B) Two thousand, five hundred dollars (\$2,500) for cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B 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 other than first-degree murder or a Class A or B felony; and

(E) Five thousand dollars (\$5,000) in cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony. Where the felony charged is first-degree murder, the director may waive the ~~three~~ five thousand dollar (\$~~3~~5,000) 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) [Amended effective December 31, 2013.] 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.

[The following additional language is a transitional provision and shall be repealed effective December 31, 2013:.] An attorney who has an existing caseload at the time of the adoption of this new subsection (g) shall take the annual hourly limit into consideration prior to accepting new appointments. An attorney who exceeds the annual hourly limit in 2013 due at least in part to hours billed in cases to which the attorney had been appointed prior to the adoption of this new subsection may request a waiver of this limitation for 2013. Any such request shall be submitted to the Director in writing and shall include details regarding the attorney's good faith efforts to comply with the rule.

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 Responsibility 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.

* * * *

[end of Appendix]