

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
05/25/2018
Clerk of the
Appellate Courts

**IN RE RULE 13, SECTIONS 2 AND 3
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2018-00796

ORDER

Rule 13, Rules of the Tennessee Supreme Court, provides for the appointment, qualifications, and compensation of counsel for indigent defendants. Section 2 of the Rule governs the compensation of counsel in non-capital cases and Section 3 establishes the minimum qualifications and compensation of counsel in capital cases. The Court is considering amendments to Section 2(c-e) and Section 3(k-m) of Rule 13 to clarify the compensation guidelines and increase the amount of compensation in certain cases. The Appendix to this order sets out the proposed amendments.

The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties concerning the proposed amendments. The deadline for submitting written comments is Monday, June 25, 2018. Written comments may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James Hivner, Clerk
Re: Rule 13, Sections 2 and 3
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should include the docket number set out above. The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order, including the Appendix, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

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

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.~~ preparing the case

~~———(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~~ and time reasonably 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 Tennessee Code Annotated section 37-10-304 and Tennessee Supreme Court Rule 24, relative to petitions for waiver of parental consent for abortions by minors;

(F) Cases alleging unruly conduct of a child which place the child in jeopardy of being removed from the home pursuant to Tennessee Code Annotated Section 37-1-132(b);

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

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

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

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

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

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

(F) Probation revocation proceedings;

(G) 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 (\$1,0500) for:

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

(B) Cases in which a juvenile is charged with a non-capital 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.~~

(45)(A) ~~Two One~~ thousand, ~~five hundred~~ dollars (~~\$2,000~~~~1,500~~) for 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 Three~~ thousand, ~~five hundred~~ dollars (~~\$3,000~~~~2,500~~) for cases in trial courts in which the defendant is charged with first-degree murder or a Class A or B felony;

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

(A) ~~Seven Hundred and Fifty One thousand~~ dollars (~~\$1,000~~~~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, ~~Two Hundred Fifty~~ Dollars (~~\$1,250~~~~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, Two Hundred Fifty dollars (~~\$1,250~~4000) 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);

(C) Two thousand five hundred dollars (\$2,500) in those categories of cases where the maximum compensation is otherwise one thousand two hundred fifty dollars (\$1,250).

(D) ~~Three~~Four thousand dollars (~~\$3,000~~ 4,000) 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~~Six thousand dollars (~~\$5,000~~ 6,000) 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 five thousand dollar (~~\$5,000~~ 6,000) maximum if the order demonstrates that extraordinary circumstances exist and failure to waive the maximum would result in undue hardship.

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)(46). Section 2(d)(46) 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)-(DE) has been revised to simplify and clarify the language. Section 2(e)(3)(D) has been revised to limit waiver of the \$34,000 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.

(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~~ (\$100);;

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

~~(3) Co-counsel out-of-court--sixty dollars~~ (\$80);

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

~~(5) Post-conviction counsel out-of-court--sixty dollars~~ (\$80);

~~(6) Post-conviction counsel in-court--eighty dollars~~ (\$80);

~~(7) Counsel appointed pursuant to section 3(i) out-of-court--sixty dollars~~ (\$80);;

~~(8) Counsel appointed pursuant to section 3(i) in-court--eighty dollars~~ (\$80).

(l) For purposes of this rule, ~~the hourly rate includes "out-of-court" means~~ time reasonably spent working on preparing the case ~~and to which the attorney has been appointed to represent the indigent party.~~ "In-court" means time reasonably 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) & (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) ~~& (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) clarifies that appointed counsel precludes compensating appointed counsel at in-court rates for time spent waiting for a case to be called and also precludes compensating appointed counsel will not be compensated 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.