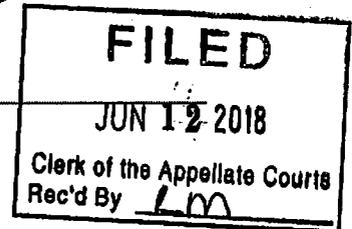


Lisa Marsh - Support for Rule 13 increases

From: "Waites, Elizabeth (Metro Clerk)" <Elizabeth.Waites@nashville.gov>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 6/12/2018 7:18 PM
Subject: Support for Rule 13 increases

ADM2018-00796



Honorable Mr. Hivner,

I am writing in my personal capacity as an attorney who previously worked in private practice and, at times, accept appointed cases in Juvenile and Criminal Courts. I now serve as the Metropolitan Clerk of Nashville and Davidson County. I would like to submit my support for an increase to rates, and I especially believe that the caps are problematic- potentially more so than the (extraordinarily low) hourly rate. I found the current system to discourage the work for attorneys, which borders on raising ethical issues that must be weighed against the fairness and equity to the attorney in doing numerous hours of free work. The people represented by appointed counsel represent the most vulnerable people who encounter our judicial system, particularly Juvenile Court guardian ad litem. These individuals should most especially receive a significant increase to the applicable caps, and preferably removed completely for that classification of attorneys. I say that as someone who actually preferred defense work, with a full recognition that it is the children are those who deserve most to have adequate representation. I do note that increase to GAL could prove problematic in that it could potentially deter counsel from choosing to act as parents' attorney if there was an applicable cap. A slight increase to the other attorneys – criminal and d&n parent attorneys – may be one idea to offset that issue. I know you all have done much work in this area, so I won't presume to offer further detailed suggestions.

Thank you for your assistance to the Supreme Court in these efforts, and I convey my appreciation to the Court for engaging in this conversation.

Elizabeth Waites
Metropolitan Clerk
BPR No. 029439
1 Public Square, Suite 205
Nashville, Tennessee 37201
(615) 862-6770

FILED

JUN 11 2018

Clerk of the Appellate Courts
Rec'd By _____

Lisa Marsh - Indigent defense rates

From: Jamie Herman <jherman@jhermanattorney.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 6/11/2018 5:33 PM
Subject: Indigent defense rates

ADM2018-796

June 11, 2018

I support raising attorney fees for those engaged in indigent defense work.

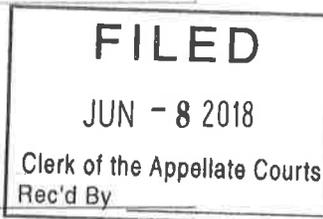
If this work is not adequately funded, the right to a court-appointed attorney becomes an empty gesture. Worse, the argument could be made that inadequately funded counsel per se are inadequate to meet the constitutional mandate for counsel.

Thank you for the opportunity to write in support of this important work.

Jamie L. Herman
Attorney
409 E. Watauga Avenue
Johnson City, Tennessee 37601
phone: 423-928-5480
fax: 423-928-5480
BOPR 9186

Christine Vicker - No. ADM2018-00796

From: John Cavett <jcavett@cavettandabbott.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 6/8/2018 1:54 PM
Subject: No. ADM2018-00796



Our government was founded as a constitutional democracy; protecting human rights, which do not need to be created but which need to be respected, was a principal motivating factor of our founding fathers and mothers. They understood that creating a foundational document assuring these rights was only the first step and that the document would fail in its central purpose if there was no one to protect and enforce the rights contained therein. The criminal justice system is the place where the almost unlimited power and assets of the government, populated by fallible men and women, intersects most often with the lives of individual citizens. Because the arena is a Court of law, the individual will always be mismatched without the services of a competent and zealous attorney. One person's loss of his or her constitutional rights is devastating to that individual but it also erodes the protections enjoyed by all citizens whether or not they ever see the inside of a criminal court room.

The criminal defense attorney, whose job, among others, is to insist that the Courts recognize and protect the rights of the citizen accused, plays perhaps the most important role in the system. Competent attorneys are the only players in the game with both the duty and ability to accomplish this critical task.

Lawyers who are appointed to represent indigent defendants are private businessmen and women, with families to raise and bills to pay. That any of them choose to work for pennies on the dollar is a testament to the profession; that great numbers choose to do so speaks to their deep sense of duty and powerful belief in the constitutional rights they protect.

There are several reasons why such attorneys should be paid an appropriate amount for their services. A rational sense of fairness and recognition of the important role they play dictates that they be paid fairly. As in other aspects of our market economy, more pay would assure better quality attorneys taking appointed cases. Adequate pay is a powerful statement of recognition of the crucial duties such attorneys perform; failing to make adequate compensation available, conversely, is tantamount to an abandonment of those protections.

Our government has endured in historically unprecedented ways. But it will surely fail the day attorneys decline to fulfill their role in the justice system. As someone who has taken state and federal appointments for 37 years, I am proud to play the role I have accepted. But neither I nor any other attorney can be forced to accept these representations. The fees allowed in indigent representation must be raised to at least a level that reflects the need for motivated attorneys to continue and I urge that the rates be raised substantially.

John C. Cavett, Jr.

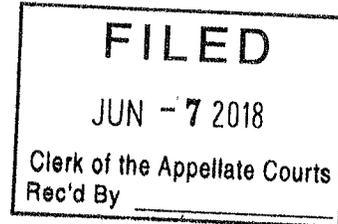
Cavett, Abbott & Weiss, PLLC

801 Broad Street, Suite 428

Chattanooga, Tennessee 37402

David C. Veazey
Attorney at Law
PO Box 3206
Chattanooga, TN 37404

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



Dear Mr. Hivner:

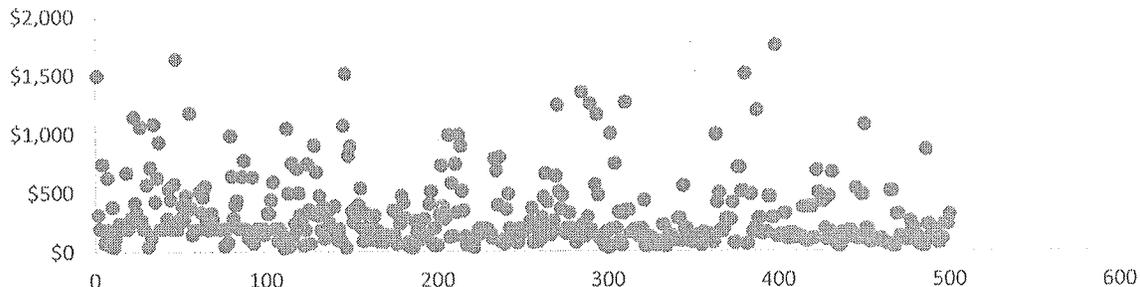
ADm2018-00796

The proposed amendments to Rule 13 that address attorney compensation in indigent cases is neither a reasonable account of the Task Force's recommendations. The focus on caps rather than on increasing the hourly rate does not improve overall compensation. The increase in the hourly rate also does not bring compensation in line with inflation.

The proposed amendments appear to take an either/or approach to hourly compensation and caps. By focusing on raising caps, the proposals wrongly assume that most indigent fee claims already approach the caps.

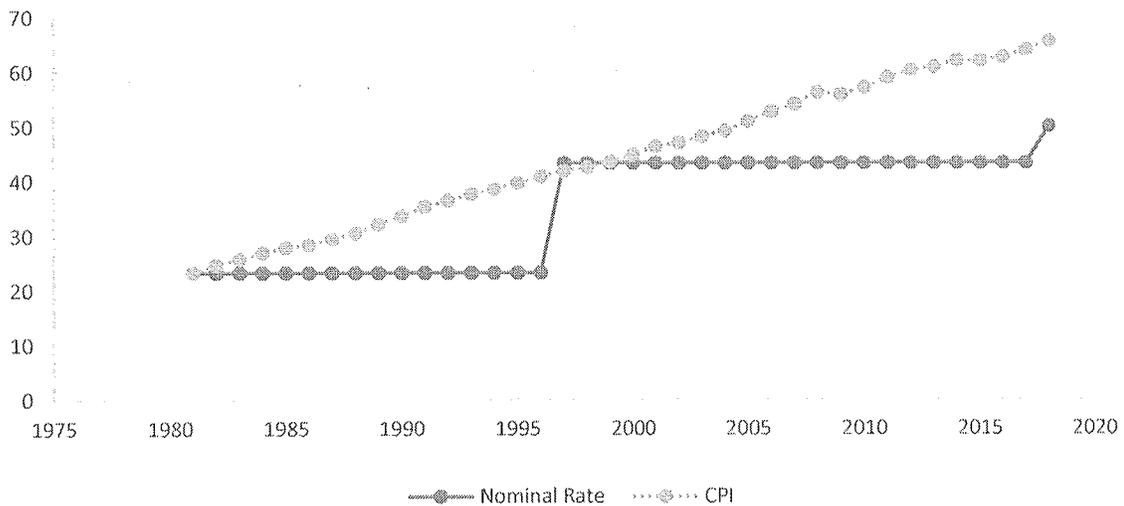
Although I do not have access to aggregate data from the Administrative Office of the Courts on fee claims from all attorneys, I believe my own claims over the years are somewhat representative. An analysis of my 500 most recent claims, going back to October 2014, shows that most are clustered well below the caps prescribed by Rule 13. The average claim was for \$289 and the median claim was worth \$195. Visually, you can see in the chart below that most of the claims are tightly clustered below the \$500 level. Claims that approach the current caps of \$750 and \$1000 are rare. Extended and complex claims beyond the caps are even rarer. Therefore an increase in caps without sufficiently raising the hourly rate does little or nothing to improve overall compensation for attorneys representing indigent clients.

500 Most Recent Claims



The graph below shows the progression of hourly rates versus increases in the consumer price index (CPI). Each data point in the CPI uses the month of April for the sake of comparison. The CPI data is taken from the Bureau of Labor Statistics (https://www.bls.gov/data/inflation_calculator.htm). To calculate the “weighted” hourly compensation rates, I assumed that for each hour an attorney bills “in court,” there will be two hours billed “out of court.” For example, the current compensation scheme calls for \$40 per hour out-of-court and \$50 per hour in-court. The weighted compensation would thus be \$43.33 per hour.

Weighted Rule 13 Compensation vs. CPI/Inflation



The graph shows that when the compensation rates were last revised in 1997, the weighted rates were increased to a level slightly above that of the CPI in 1997. Perhaps this was not coincidental. The CPI level increased to \$65.60 in April 2018. However, the current proposed increase to \$50.00 per hour only brings compensation up to 2005 levels in the CPI. To bring compensation in line with the CPI, the hourly rate must be at least \$65 per hour. Given that this compensation issue was last revisited 21 years ago, the compensation rate should rather be indexed to the CPI to avoid giving attorneys a pay cut, in real terms, year after year in the future.

I appreciate you giving me an opportunity to comment. I hope that my comments may be useful.

Yours sincerely,

David C. Veazey, BPR # 028753

FILED

MAY 31 2018

Clerk of the Appellate Courts
Rec'd By _____

appellatecourtclerk - Indigent representation

From: Beth Ziarko <beth@brasfieldandbrasfield.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/31/2018 10:07 AM
Subject: Indigent representation

ADM 2018-00796

We have been requested to provide comments to the rules regarding indigent representation. I am about to retire so you may think I should not have an opinion, but I care very much what happens to the children who are represented in Juvenile Courts and their families. I used to practice regularly in that court, but one of the reasons I gave it up was because of the pitiful amount attorneys were given for the representation. I am able to operate my office on an unusually small amount of overhead, but even with that, I could not cover my overhead with the amounts provided for payment for indigent clients. I had an attorney practicing with me for several years who was primarily a defense attorney. He lost money on the appointed cases. He has now left private practice for a federal position. I think it is outrageous that the amounts allowed for attorneys has stayed the same for so many years and now that there is some hope of a realistic increase, we find out the Supreme Court is not even using the amounts recommended. Maybe they should come back to a private practice and see what it is like to make a living when you are given cases and your payments do not even cover your overhead.

Right now the lawyers who take the appointments are primarily the youngest, least experienced lawyers. They use this as a route to get name recognition and once their practices pick up, they stop taking appointed cases. We have a Supreme Court that wants to push pro bono work, but then apparently does not care if the lawyers they want representing people for free or at greatly reduced rates can make a living otherwise. I am not sure other lawyers will be so bold to complain because they may find themselves before that Court from time to time. Since I am not in that position, I do not mind speaking for them.

Elizabeth B. Ziarko

appellatecourtclerk - Rule 13 comments

ADM 2018-00796

From: Nick McGregor <nick@mcgregorlawtn.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/31/2018 3:35 PM
Subject: Rule 13 comments

I'm sure you're getting a lot of these so I will keep it brief.

Rate *definitely* needs to increase.

Murders should be \$10 more per hour than regular cases.

Annual hourly cap needs to increase.

If the annual cap does not increase above 2000 hours then murder cases should not count toward the 2000 hours.

Some of these murders have thousands of pages of information and hours of recorded interviews. The consequences are too grave to skim or cut corners. Particularly when, if the defendant is convicted, the attorney will have to later defend the work he/she did in a post conviction hearing.

Raise cap on appeals to \$1500 but keep rate the same.

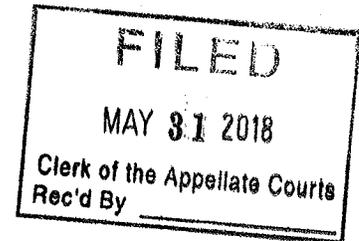
Call me if you have any questions,
Nick

--

McGregor Law
222 2nd Avenue North
Suite 416
Nashville, TN 37201
(615)290-5205
mcgregorlawTN.com

This message may contain confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system.

An Attorney-Client Relationship has not been formed unless both parties have agreed.



FILED
MAY 30 2018
Clerk of the Appellate Courts
Rec'd By _____

appellatecourtclerk - Comments on Rule 13, Sections 2 and 3

From: Thomas Hutto <thutto@maurycountytitle.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 5/30/2018 3:31 PM
Subject: Comments on Rule 13, Sections 2 and 3
Cc: Lucian Pera <lpera@tnbar.org>
Attachments: 2018-05-30 Comments on Rule 13.pdf

ADM2018-00796

Dear Mr. Hivner,

I have attached my comments in the form of revisions to the current Rule 13, Sections 2 & 3.

I believe my revisions greatly simplify the process and will both increase the quality of indigent representation and the participation by both new attorneys and experienced criminal lawyers. Rather than try to micro manage every criminal transgression, I think the state should simply adopt a flat cap on payments to attorneys for providing indigent defense. I have proposed it be \$80,000.00 per year as the current rules cap an attorneys hours at 2000 for the year, and 2000 hours X \$40.00 equals \$80,000.00. For non-capital cases, I suggest that an attorney be paid ½ their customary rate, and that lead counsel in capital cases be paid their customary rate.

Having a flat cap on the amount paid will allow attorneys the flexibility to take cases in an amount that is reasonable and provides them the resources to devote adequate time to each case. Currently, attorneys routinely exceed the current monetary cap on an individual case due to the time required for a trial and end up being under compensated for their efforts. Knowing that they will be paid for their full efforts will encourage experienced attorneys to take appointed cases and allow them to do so without losing money on each case.

Under my proposal an attorney could take 100 general sessions matters a year at an average of \$800 per case, or 50 simple felonies at \$1600 per case. They could decide to take 10 major felonies and average \$8000 per case or even 1-2 capital cases per year and provide the required defense necessary and be able to pay for experts, investigators, and travel costs that are currently beyond the ability of many solo attorneys and small firms. This flexibility will allow for an attorney to take on the cases that they can reasonably defend and I think will improve the quality of representation in our state.

Understandably, I also think there is potential for the abuse of this system, however, I cannot imagine that it is any greater than what is occurring under the current Rules and I imagine that any of our judges reviewing and approving these amounts would both deny an attorney who is overcharging the state and reconsider appointing the attorney to future cases.

Best regards,

Thomas M. Hutto
Attorney-at-Law

Lawwell, Dale, Graham & Hutto
805 S. Garden Street
Columbia, TN 38401
931-388-2822
<http://www.lawwelldaleandgraham.com/>

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) Any attorney providing indigent defense in any court in Tennessee or the United States Supreme court may be compensated up to a total maximum amount of \$80,000.00 per year regardless of the amount of cases or representation undertaken.

(2) The hourly rate for an attorney may be no more than ½ their usual and customary rate proved by sworn affidavit and submitted on an annual basis to the Administrative Office of the Courts not later than June 1 of every year. 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(c), 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) 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 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);~~

~~(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 five thousand dollar (\$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. [As amended by order filed March 5, 2013.]~~

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 Tennessee Code Annotated section 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:

Subject to the provisions in Section 2(c)(1) Lead counsel shall be compensated at their usual and customary rate as proved by sworn affidavit and co-counsel may be compensated at $\frac{3}{4}$ of their usual and customary rate as proved by sworn affidavit and submitted on an annual basis to the Administrative Office of the Courts not later than June 1 of every year.

~~(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);~~

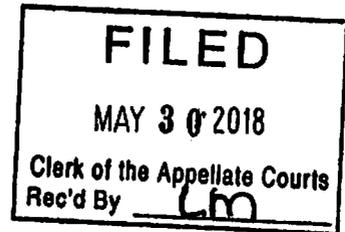
~~(7) Counsel appointed pursuant to section 3(i) out of court—sixty dollars (\$60);~~

~~(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.

From: Angela Blevins <ablevs11@aol.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/29/2018 4:50 PM
Subject: Proposed Supreme Court 13 rule change



ADM2018-00796

To whom it may concern,

I am writing at the behest of my colleague Mike Stanuszek, Mike unlike me is an optimist and believes that the Supreme Court is legitimately interested in our input. The Supreme Court started this indigent defense journey almost two years ago. I was immediately suspicious when the committee appointed to study indigent representation was made up of individuals who clearly have never taken Court appointments. Nonetheless, these individuals went on a listening tour, studied the issue and came back with a fair recommendation. That was a year ago, and those recommendations have been completely ignored. Instead we have a proposed rule that changes the indigent representation fee structure by an aggregate of eight dollars an hour. And lets be real, that is eight dollars an hour more after 24 years of no raise. Eight dollars an hour doesn't even keep up with cost of living raise in 24 years. So here is my comment on the proposal. You should be embarrassed by the message you are sending to the very few attorneys who are still willing to take Court appointments, as well as to the indigent litigants they represent. The Supreme Court goes on and on about access to justice, with programs and commissions and encouraging attorneys to donate their time. You should consider that the most accessed point of justice for the indigent is through the indigent appointment system. It is when the indigent are experiencing the biggest crisis of their lives that the state steps in to appoint and pay for an attorney. Eight dollars an hour is a shameful increase.

You should ask yourselves, what message are you sending me about my value to the State of Tennessee, what message are you sending to the indigent in the state? Eight dollars an hour increase is currently speaking for you.

Best,

Angela M. Blevins
Attorney at Law
P.O. Box 70432
Knoxville, TN 37938
865-776-2946
Fax: 865-299-7983

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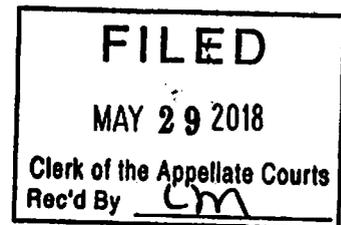
(423) 639-3511

Fax (423) 639-0394

May 26, 2018

ADM2018-00796

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



Dear Mr. Hivner:

As I was preparing to enter into my reverie over this Memorial Day weekend, the traditional beginning of summer, and the time to reflect upon those who gave their lives to make this country the greatest in the history of the world—which said reverie consists of a three-day holiday without phone calls from clients and with the ability to catch up on my paperwork at the office, so no family trips for me—I closed out my evening yesterday (Friday), with what I normally do: peruse the TBA TODAY publication which is sent to my email's inbox every day. I find the TBA TODAY to be my primary source for not only news about our State's legal profession, but also my primary source for reading new cases and rules that have been issued, not only by our appellate courts, but also by the Sixth Circuit.

In reading yesterday's TBA TODAY, I immediately jumped at the opportunity to read the new proposed amendment to Supreme Court Rule 13. You see, for the past three to four years, this aspect of our jurisprudence in this state—payment of attorneys who do the grunge work for our Bar—has been THE hot topic among most attorneys in this State. And, after a Blue Ribbon panel led by former Justice Koch spent time out of their own schedules, on their own "hook", so to speak, and told the branches of government what ought to occur in this regard, I felt that, finally, just compensation would be paid.

I then read the proposed amendments, which pertain to the alteration in the schedule of compensation for those attorneys who perform indigent defense work. I have some adjectives to describe these amendments:

- Cheap
- Niggardly
- Penurious
- Parsimonious
- Stingy
- Avaricious
- Petty
- Privatious
- Peonage (not an adjective, but an apt description)

Mr. James Hivner
May 26, 2018
Page 2

In case the meaning of 8 adjectives and one noun are not known to you or your readers, let me respectfully, use these in sentences, thus:

“The General Assembly of the State of Tennessee is cheap in that it authorized only \$9.7 million extra to fund a necessary right for all citizens accused of crimes who are too poor to pay for competent defense.”

“The opinion of the Tennessee Executive Branch that the mere pittance it deigns to give attorneys who practice indigent defense law shows a niggardly attitude toward the attorneys’ subsistence.”

“The judicial branch of the Tennessee government is certainly penurious when it opines that an additional \$10.00 per hour and \$500.00 per case will correct the inequities in the funding of the indigent defense system that have been existent for a quarter century.”

“It is parsimonious to pay attorneys \$50.00 per hour for indigent defense work, which is less that what is paid to many categories of expert witnesses employed by the attorneys representing indigents.”

“The General Assembly of the State of Tennessee is stingy when it allots less than \$10,000,000 new monies to fund indigent defense. The lobbyists who control the 132 members of the General Assembly are NOT stingy, when they pay at least 10 million or more to provide Tennessee’s solons with free food, free spirits, and free “entertainment,” (read between the lines).”

“The Executive Branch of the State of Tennessee is avaricious: The current occupant of the office has a personal net worth of over \$1 billion. Thus, \$10 million to him would be like, say, \$2,000.00 to us mere mortals.”

The General Assembly is petty. The conservative-dominated General Assembly believes that “these criminals don’t need a lawyer and need to get what they deserve.” Yet, let one of their family members be arrested, and each of them will cry “foul” the loudest.”

“The privatious attitude all branches of State government, in finding only \$10 million extra out of its \$40 BILLION DOLLAR BUDGET to fund indigent defense is a shame. \$10,000,000.00 is .00025th of the state budget. The median income of a family of four in Tennessee is \$75,000.00. If a beggar, who had been mercilessly beaten, stabbed, and run over with a car, came to the door of a typical family of four in Tennessee and requested .00025th of its median income, the amount the beggar received, \$18.75, would be enough to buy the beggar only one meal from a McDonald’s. Thus, this family would be called privatious, but why is State Government not called privatious when it figuratively spits on attorneys.

Mr. James Hivner
May 26, 2018
Page 3

And, finally....

"Once again Tennessee's attorneys are forced into utter peonage."

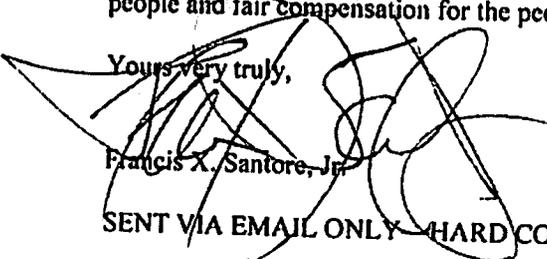
I thought, Mr. Hivner, that peonage, or slavery, if you will, was outlawed in this country over 150 years ago.

I shall not comment further. I, and others, have been, to euphemistically quote an upper East Tennessee saying, "shoveling manure against the tide," for many years. Yes, this is a *fait accompli*. Bill Haslam congratulates himself while secretly checking his Pilot Oil billion-dollar balance sheet, all the legislators slap themselves on the back and go to the nearest lobbyist party in Nashville, the "skyscraper lawyers" (a Bill Haltom characterization) who are disproportionately represented in the Tennessee Bar Association clap their hands, congratulate themselves, and then find ways to bill their insurance and corporate clients \$500 per hour, and the Administrative Office of the Courts and its personnel continue to draw their salaries, with many non-lawyers in the AOC making more than the typical attorney who comes out of multitude of law schools in Tennessee or other states with no hope of making a living, and contributing to building a strong family (and, more importantly for the conservatives in the legislature, who seem to ignore this aspect—as my colleague shared with me last night—building a SMALL BUSINESS that (a) pays taxes, (b) employs people, (c) joins civic clubs, (d) runs for office or does its civic duty elsewhere, such as serving on town boards or contributing to charity). It is a damned shame.

I, however, sir, am a big believer in Karma. The world always rotates 360 degrees in a 24 hour period, and there shall be many 24-hour periods to come. One wonders whether, as in New Orleans, the attorneys who perform indigent defense work (and, as I have said in many letters to you on many subjects, this amounts to less than 10% of my income, but I pray for those who depend upon indigent defense work for their bare subsistence) in this State will go out on strike. When the prisons become crowded, and court dockets become crowded, and there is chaos, what will our government do then? I am, of course, just hypothetically speaking.

Obviously, if you have not gleaned from my words above, I respectfully dissent from the proposed amendments to Rule 13: the amendments do not go far enough in insuring fair defense for indigent people and fair compensation for the people who defend them.

Yours very truly,


Francis X. Santore, Jr.

SENT VIA EMAIL ONLY—HARD COPY RETAINED—TO appellatecourtclerk@tncourts.gov.

FILED

MAY 29 2018

Clerk of the Appellate Courts
Rec'd By _____

appellatecourtclerk - Comment on Proposed Changes to Rule 13

From: Kelly Wojciechowski <kellywojciechowski@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/29/2018 11:08 AM
Subject: Comment on Proposed Changes to Rule 13

ADM2018-00796

The Task Force recommended the following: "The compensation rate for private counsel appointed under Tenn. Sup. Ct. R. 13 should be increased to between \$75 and \$125 per billable hour and corresponding adjustments in the amount of claims exempt from judicial approval should be made." Why did Tennessee expend resources for the Task Force if the Court is not following their recommendation? Per the Task Force's report, \$50 in 1997 would be the equivalent of \$75.65 today. Although \$75 is still significantly lower than most private attorneys are paid per hour, \$75 would at least account for inflation and cost of living adjustments. Indigent counsel are forced to spend countless hours working on these cases to make ends meet due to the inadequate compensation provided by the state. Often times, counsel is not even paid for all of the hours worked due to the caps. Our Constitution gives indigent defendants the right to counsel. Please increase the pay to what was recommended by the Task Force in order to give indigent counsel the means and resources to adequately represent their clients.

Thank you,

Kelly A. Wojciechowski
Attorney at Law
P.O. Box 6228
Maryville, TN 37802
Phone: 865-233-8509
Fax: 865-245-2013
kellywojciechowski@gmail.com

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appellatecourtclerk - Compensation Limits

FILED

MAY 29 2018

Clerk of the Appellate Courts
Rec'd By _____

From: "Larry Roddy, Attorney at Law" <filesuit@volstate.net>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/26/2018 8:47 AM
Subject: Compensation Limits

Adm 2018-00796

The limits for DNN and TPR cases needs to be increased. These cases should receive priority and the limit of \$750.00 is nowhere what it needs to be. Much time is necessary to do these cases right and the consequences of not doing everything, being effective counsel, is disastrous. These children and their parents deserve an attorney who can devote the time to protect them properly. But, with the current limit of \$750.00 most of the time expended ends up pro bono. Even so, where I practice, Rhea County, I see attorneys, as well as myself, going way beyond the time limit and compensation limit regardless. Please consider increasing the limit on these type of cases.

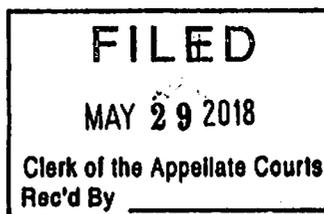
appellatecourtclerk - Compensation for appointed counsel

From: Richard Duncan <rduncanlaw@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/26/2018 3:00 AM
Subject: Compensation for appointed counsel

ADM2018-00796

The proposed changes in compensation for appointed counsel are inadequate, but represent a step forward.

Richard Duncan
#012905
Knoxville Bar



FILED

MAY 29 2018

Clerk of the Appellate Courts
Rec'd By _____

appellatecourtclerk - Rule 13 Proposed Changes

From: "Ryan C. Davis" <ryan@ryancdavislaw.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/28/2018 9:53 AM
Subject: Rule 13 Proposed Changes

ADM2018-00796

To Whom It May Concern,

I take quite a few court appointed criminal cases, so I have watched the development of the increased hourly rates closely. I even attended one of the task force meetings. I read the task force's recommendations cover to cover and was hopeful that we would see an increase to at least \$75 an hour, which is in line with majority of the rest of the country's hourly rate for court appointed attorneys. After reading your proposed increase to only \$50 an hour, I am deeply disappointed in the Supreme Court for not placing a higher value on my services, and more importantly, not placing a higher value on the Constitutional Right to an attorney for all citizens. I have been struggling to afford to take appointed cases at the current rate, and at only a \$10 increase, I will not be able to continue taking appointed cases. This troubles me, as I believe the work I do is so important. But I have a family and a mortgage, and the math just doesn't work. I cannot provide my clients quality representation and make ends meet at this rate. And I personally am not willing to give my clients anything less than my best. So this insulting increase is forcing me to stop accepting any court appointed cases and focus on growing my retained business.

I truly hope that you will take my message to heart and consider the increase that your very own task force recommended.

Sincerely,
Ryan

Ryan C. Davis
Attorney at Law
1230 2nd Ave S
Nashville, TN 37210
615-649-0110

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appellatecourtclerk - Rule 13 Compensation

FILED
MAY 29 2018
Clerk of the Appellate Courts
Rec'd By _____

From: Zale Dowlen <zale.dowlen@outlook.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 5/29/2018 8:03 AM
Subject: Rule 13 Compensation

ADM2018-00796

Dear Court:

While I was hoping for a little more of an hourly rate, any increase is helpful.

Zale Dowlen, Attorney

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"Learn to do good. Seek justice. Help the oppressed.
Defend the cause of orphans. Fight for the rights of widows."
Isaiah 1:17 NLT