



Administrative Office of the Courts

Nashville City Center, Suite 600
511 Union Street
Nashville, Tennessee 37219
615 / 741-2687 or 800 / 448-7970
FAX 615 / 741-6285

MICHELLE J. LONG
Director

Rachel Harmon
Deputy Director

MEMORANDUM

TO: Attorneys, Experts, Investigators

FROM: Joseph K. Byrd, Lead Attorney (Indigent Services Team)

DATE: October 4, 2024

RE: Policies for Submission of Expenses Under Rule 13

This memorandum replaces the memorandum dated September 1, 2023 regarding submission of expenses. Please carefully review the content below for potential changes or clarifications made since the September 2, 2023 memorandum. The policies/procedures have been established to assist the AOC staff with auditing requirements and with streamlining payment of claims. Please ensure your claim complies with the following non-exhaustive list of requirements in addition to all the requirements listed in Tennessee Supreme Court Rule 13 (“Rule 13”).

Please note that the caps in R. 13, Sec. 2 do not apply to expenses. Expenses are paid in addition to the hourly rate paid to attorneys.

Moreover, note that expenses (particularly travel expenses) are based within the overarching state policy:

When traveling, state employees should be **as conservative as circumstances permit**. The **lower cost should be selected** whenever practical. Reimbursement for travel will be based upon the **most direct or expeditious route possible**. Employees traveling by an indirect route must assume any extra expense incurred.

Policy 8 – Comprehensive Travel Regulations, Tennessee Department of Finance and Administration (revised January, 2022) at 1.

Non-compensable Expenses Under Rule 13

- Normal Overhead R. 13, Sec. 4(a)(2) does not define overhead but this is construed to cover office expenses (utilities, rent, etc.) and office supplies (pens, paper, printers, computers, etc.)
- Pro-rata cost of subscription for computerized research will not be reimbursed. Tenn. Sup. Ct. R. 13, Sec. 4(a)(3)(H).
- Expenses related to improving the indigent party's appearance (e.g., dental plates, haircuts, clothing and cleaning) are not reimbursable. Tenn. Sup. Ct. R. 13, Sec. 4(a)(3)(J).
- Foreign language interpreters and translators are not paid under Rule 13 but are paid under Rule 42. Tenn. Sup. Ct. R. 13, Sec. 4(c).
- Expenses that are waived for indigents or paid by other agencies or entities are not reimbursed under Rule 13. Some include the following:

- Filing Fees

Tenn. Code Ann. § 8-21-401(a) sets out fees that court clerks should charge and provides "[e]xcept as otherwise provided by law, the costs provided in this section in civil cases are chargeable and may be collected at the time the services are requested from the clerk or other officer of the court; however, nothing in this section should be construed to limit the ability of a party to initiate a judicial proceeding by filing a pauper's oath. In cases where payment of the clerk's fees would create a substantial hardship for a party, judges are encouraged to use the discretion provided in Rule 29 of the Tennessee Rules of the Supreme Court to find that the party is indigent, even if that person does not meet the Legal Services Corporation's poverty guidelines."

Tenn. Sup. Ct. R. 29 references Tenn. Code Ann. § 20-12-127 that provides that "[a]ny civil action may be commenced by a resident of this state without giving security as required by law for costs and without the payment of litigation taxes due . . ."

- Subpoena and costs for fact witnesses in a criminal matter.

Tenn. R. Crim. P. 17(b) which provides the following:

Defendants Unable to Pay. On a defendant's ex parte application, the court shall order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness fees and that the presence of the witness is necessary for an adequate defense. If the court orders the subpoena to be issued, the process costs and witness fees shall be paid in the same manner as those paid for state witnesses.

- In juvenile matters, Tenn. Code Ann. § 37-1-150 provides that the following expenses may be a charge upon the funds of the county:
 - Cost of medical and other examinations and treatment of a child that is ordered by the court.
 - Cost of any preadjudicatory placement of a child pursuant to §§ 37-1-114 and 37-1-116, including necessary transportation of the child to such placement
 - The expense of service of summons, notices, subpoenas, travel expense of witnesses (except the cost of transporting a child who has been committed to a state correctional institution on an offense that would be a felony if committed by an adult shall be paid by the state)

- TBI diversion fees

Indigent defendants cannot use the online application but must mail, fax or email their forms – check the TBI website (CJIS Division) for information.

- Electronic Monitoring (AEMIF)

Alternative Electronic Monitoring Indigency Fund (AEMIF) under the Department of Finance and Administration's Office of Criminal Justice Programs. Direct grant appropriation of the AEMIF is now at the local county level.

AEMIF provides financial reimbursement to local jurisdictions who provide or install devices ordered by a judge for indigent persons required to have a monitoring device and include:

- Transdermal devices
- Electronic monitoring devices with random alcohol or drug testing
- GPS monitoring devices

The Electronic Monitoring Indigency Fund (EMIF) provides financial reimbursement to certified interlock installers. Persons deemed indigent by the court who are required to have an interlock ignition device as a result of a drunk driving offense, can obtain the device through a certified vendor ("Provider"). The court can order the defendant to pay a portion of the device cost. The EMIF will reimburse the remainder to Providers certified to install, maintain, and monitor device usage. The total cost of the device cannot exceed \$200 per month. *See* the Department of Treasury, Claims and Risk Management website for EMIF.

Travel Related Expenses

- The travel time and mileage expense policy is now:

*Except as limited or prohibited in Rule 13, **attorneys traveling from their office to destinations necessary in the representation of their clients will be paid for travel time and be reimbursed for mileage that is ten or more miles.** Payment for travel time and mileage reimbursement applies whether the travel is in or out of the attorney's home county. This policy will apply to attorneys who have offices over the state line who are appointed to represent indigent parties. (IST Policy # 04-005-2024). The ten-mile threshold is set by the round-trip travel.*

- Claims for mileage must include the cities of origination and destination and a brief description of the purpose of travel. Rule 13, sec. 4(a)(3)(B).
- Claims for parking are reimbursed up to **\$20 per day** if accompanied by a receipt. Amendment to Rule 13, sec. 4(a)(3)(E). Claims for monthly parking bills are not accepted and will not be reimbursed.
- Travel that is more than 50 miles over the Tennessee state line and/or when an overnight stay is required must be authorized by a prior approval order signed by the Judge and approved by the AOC. (Tenn. Sup. Ct. R. 13, Sec. 4(b)).
- Expenses related to overnight lodging and meals will only be paid if the expenses are within the guidelines of General Services Administration (GSA) per diem rates for that particular city. Meals will be paid as per diem under the GSA limits and do not require a receipt. Instead of the links listed in R. 13, refer the applicable rates at: <https://www.gsa.gov/travel/plan-book/per-diem-rates>. The site is often referred to as "CONUS" and can be found by using that term in a search engine or use "GSA Per Diem.". The rates contained for the city in the GSA website are generally the same as the authorized executive branch rates and the Judicial Department travel regulations.

Court Reporters

- Court reporter expenses are not considered miscellaneous expenses and except for felony trials always **require prior approval** by the judge and the AOC before the court reporter performs any work. Rule 13, section 4(b).
- Once an approved order is obtained from the court, you may email it to the AOC at indigentteam@tncourts.gov. Once prior approval is granted by the AOC, a copy of the approval will be emailed back to you. This will be your notice that the expenses may then be incurred.
- Retain only court reporters who are already employed by the AOC or who already have fully executed contracts on file with our office (this prevents misunderstandings regarding the AOC's compensation schedule). The AOC maintains a list of these reporters and will be happy to provide it to you upon request.

- The rate paid to court reporters by the AOC for transcription services is \$4.00/page for a set which includes one original and one copy (then \$.50/page for each additional copy).
- After the court reporter has produced the transcript, you may submit to the AOC an invoice from the court reporter that details the court reporter's name and address, the number of pages transcribed, the date the transcript was requested, the total amount requested, and a copy of the order granting prior approval by the trial court and the AOC.

Copy Expense

Tenn. Sup. Ct. R. 13, Sec. 4(a)(3)(F) provides reimbursement of black and white copies. Copies should always be made in black and white copies unless color copies are absolutely necessary and then the color copy rates in Tenn. Sup. Ct. R. 13, Sec. 4(a)(3)(G) apply. Audits will request verification and explanation for large numbers of color copies as permitted by Tenn. Sup. Ct. R. 13, Sec. 6(a)(6) and 6(b)(1).

Tenn. Sup. Ct. R. 13, Sec. 4(a)(3)(F)(v) and Sec. 4(a)(3)(G)(iii) require that total copying costs that exceed \$500 must have prior approval of the Court and the AOC.

Miscellaneous Expenses

- Miscellaneous expenses under R. 13, sec. 4(a)(3)(I) includes various expenses necessary to representation **totaling less than \$250**. Examples in the rule are not a limitation of the expenses that would be permissible. (IST Policy #04-002-2023)
- Examples of miscellaneous expenses include, but are not limited to, reimbursements for items such as postage, commercial delivery service, film, memory devices required for electronic discovery, publication in a newspaper, fees for private process servers (as permitted below), preliminary CDs, medical reports, and background checks. (IST Policies #04-002-2023 and #04-003-2023)
- Expenses for private process servers must be for a necessary party and only where service by the county sheriff is impossible or cannot be completed timely. Attorneys must affirm this information in the comments section in ACAP when entering this expense as a miscellaneous expense. (IST Policy #04-003-2023).
- Claims for reimbursement of overhead are not permitted and will not be paid even if entered as a miscellaneous expense. Rule 13, sec. 4(a)(2). Overhead includes but is not limited to office supplies, such as folders, envelopes, tabs, pens, etc.
- All miscellaneous expenses must be supported with receipts, except for in-house postage up to \$8/day per claim. (IST Policy #04-001-2023)

Receipts

- As a general rule, claims for all expenses must be supported by receipts. The following expenses are exceptions to the general rule and do not require receipts:
 - Mileage (see travel related expenses above)
 - In-house copies
 - Postage up to \$8.00/day per claim (IST Policy #004-001-2023)

Anticipated Expenses for Investigators and Experts

- For reimbursement of expenses for an investigator or expert, the order approving the services must provide an estimated amount of anticipated miscellaneous expenses.