



# *Administrative Office of the Courts*

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**MICHELLE J. LONG**  
Director

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Deputy Director

## **MEMORANDUM**

**TO:** Attorneys Submitting Fee Claims to the AOC

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

**DATE:** September 1, 2023

**RE:** Policies for Submission of Attorney Fee Claims

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This memorandum replaces the memorandum dated December 7, 2020 regarding submission of fee claims. Please carefully review the content below for potential changes or clarifications made since the December 7, 2020 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 of the requirements listed in Tennessee Supreme Court Rule 13 (“Rule 13”).

### **Appointment Orders**

- An appointment order *must* include:
  - the style of the case, including the docket or case number;
  - the client’s name;
  - a finding of indigency (unless appointed as a GAL);
  - a statement showing you were appointed: and
  - the judge’s signature.

This information must be correctly reflected on the Properties page in ACAP.

- R. 13, sec. 1(e)(5) provides that appointed counsel shall continue to represent the client throughout the proceedings, including any appeal, until the case is concluded or counsel has been allowed to withdraw by a court. Accordingly, only **one appointment order is necessary** and can be used through the various phases of a case. It must be uploaded with each claim for which it applies (trial, court of appeals, etc.) The *only exception to this general rule is for appointments for violations for probations*. In order to keep ACAP from triggering a duplicate claim or interim billing, when submitting a fee claim for a second or subsequent probation violation with the same case number, please obtain and upload a new appointment order.
- Redact Personal Identifying Information such as birthdates, social security numbers, and checking account numbers on all documents (including orders, invoices, etc.) before submitting your fee claim.

### **Activities Entered on a Claim**

- Attorney fee claims must identify the time appointed counsel expended on each activity. Attorney fee claims may only seek compensation for time appointed counsel spent on case-related work. Time spent recording or entering your time or communicating with the AOC is non-compensable. *However, you may enter time for drafting motions and proposed orders for complex and extended claims.*
- Time *must* be recorded in tenths, or six-minute increments. Time cannot be recorded in half-hour or hourly increments. Recording time in half-hour or hourly increments may trigger overbilling and result in a comprehensive audit of your billing practices.
- When claiming compensation for time spent on an activity that appears excessive, such as a two-hour phone call, please explain why the additional time was necessary. Only .5 will be allowed for opening or closing a file without a clear explanation as to why a particular file required more than .5 hours to create or close.
- “In-court” time must be entered separately from out of court time. When claiming time for “in court” activities, you must describe the activity, such as the type of hearing, a continuance, etc. Simply listing “in court” or “docket call” as the activity is not sufficient. Additionally, time for in-court activity is only for time you are engaged with the judge or trying the case before a jury/judge. Time talking to a client or waiting for the case to be called should be entered as out of court time, even though you were physically in the court room. In court hours are aggregated in various reports and must be entered apart from out of court time.
- Claiming 0.1 for each text/email that is sent/received is not allowed. You must aggregate your time for these activities. Failure to aggregate your time for these activities may trigger overbilling and result in a comprehensive audit of your billing practices.
- Attorneys are capped at claiming 2,000 hours per year under R. 13, sec. 2(f). The only exception is when the Director determines an attorney who is working on a capital case who has made a reasonable effort to comply with the rule. Auditors will reduce all other claims accordingly after attorneys reach the 2,000-hour cap.

## Information on the Properties Tab

- In criminal matters, be sure to enter the sentence and the disposition.
- When the claim states that the case was disposed of by final order several weeks after your last appearance in court, upload a date-stamped copy of the final order. The file stamped date on the final order determines when the 180-days begins to run on all non-capital claims (except post-dispositional dependency & neglect claims for which time begins to run with the last activity) (IST Policy #06-003-2023). *A claim may be submitted before the final order is entered, but the final order should be uploaded if it is available to avoid a claim being returned if there are questions regarding timeliness.*
- When representing a parent in a dependency and neglect or termination of parental rights proceeding, list both the parent's and the child's name on the Properties page in ACAP.
- The birthdate of the minor child in a dependency & neglect or termination of parental rights case must be entered on the properties tab to support the claim was for a minor as required by Comptroller's office. However, birth dates must be redacted from any documents submitted with the claim, because they become public records when submitted to F&A for payment. Failure to redact documents can result in a substantial delay in processing payment for a claim.
- If a judge has signed an order declaring the case complex or extended, check the complex box on the Properties page and upload the signed extended/complex order when prompted in ACAP.

## Complex and Extended Claims

- R. 13, sec. 2(e)(1)(E) requires that the order certifying that a case is complex and extended ("C&E orders") **must** be signed contemporaneously with the court's approval of the claim. C&E orders must be dated prior to or on the date the judge/magistrate approves the claim in ACAP. Under sec. 2(e)(1)(E), *nunc pro tunc* certification orders **are not** sufficient to support payment under this section.
- R. 13, sec. 2(e)(1)(E) requires the order must recite specific facts supporting a finding that a case is complex and extended or incorporate by reference and attach the motion which includes the facts supporting the motion. Attorneys should draft proposed C&E orders reciting the specific facts supporting the court's finding that a case is complex and extended or make sure to upload the written motion that does recite the facts.
- In non-capital first degree murder and Class A or B felony cases, the default cap is \$6,000. If attorneys desire to have the Director consider waving the cap as set out in R. 13, sec. 2(e)(3)(E), the C&E order **must demonstrate that extraordinary circumstances exist and failure to waive the maximum would result in hardship.**

## **Over Claim Audits**

- For several years, the AOC has been required by the Comptroller's Office to scrutinize claims for potential overbilling. To effectuate that process, ACAP is set to trigger an "over claim" when an attorney claims more than 8 hours of in court time in one day or more than 12 hours total in one day. The trigger does not mean the claim is rejected, it simply means a more comprehensive audit must be performed where supporting documents and an affidavit from the attorney must be submitted in order for the AOC to approve the claims. (IST Policy #06-001-2023 and #06-002-2023).
- The AOC Compliance Officer will send an email notice to the attorney requesting the additional support information within two weeks (ten business days) of the notice. The response affidavit may be a simple explanation or more lengthy document sent with a number of supporting documents depending on the circumstances.
- Attorneys who fail to respond by the deadline set by the Compliance Officer will receive a final notice from the Lead Attorney stating that a response must be received within 30 days from date of the final notice or the claims will be denied. If the claim is denied and the attorney requests the review of her/his claim by the Chief Justice as set out in R. 13, sec. 6(b)(5), that request must be received within 10 days of the notice of denial or the review is waived. (IST Policy #06-002-2023). The Chief Justice will only review the claim as entered into ACAP and the supporting records submitted by the attorney up to the issuance of the denial, no additional documents or arguments from the attorney will be transmitted to the Chief Justice. The decision of Chief Justice is final.