

**IN THE SUPREME COURT OF THE STATE OF TENNESSEE**

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**TENNESSEE ASSOCIATION OF** )  
**CRIMINAL DEFENSE LAWYERS,** )  
 )  
**Petitioner.** )  
 )

**IN RE:** )  
 )

**PETITION TO AMEND RULE 13 OF** )  
**THE RULES OF THE SUPREME COURT** )  
**OF TENNESSEE TO INCREASE** ) )  
**HOURLY RATE PAID APPOINTED** )  
**COUNSEL OF INDIGENT DEFENDANTS** )

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**I. Opening**

Comes now the Petitioner and respectfully moves this Court to amend Supreme Court Rule 13 in order to establish a constitutional, adequate, and effective system for the appointment and compensation of private attorneys appointed to represent indigent persons accused of crimes in the State of Tennessee. The Tennessee Association of Criminal Defense Lawyers is a non-profit statewide organization with over 800 members, including private criminal defense lawyers, public defenders, law professors and law students. Founded in 1973, TACDL is the state’s leading organization advancing the mission of criminal defense lawyers to protect and ensure the individual rights of citizens accused of crime guaranteed by the United States and Tennessee constitutions. TACDL has as its mission statement advocacy of “fair and effective justice in the courts, the legislature, and wherever justice demands.” TACDL requests the Court amend Supreme Court Rule 13 by increasing the hourly rates and caps for court-appointed counsel cases, by adding an overhead component to the rate increases, and by creating standards for appointment of counsel based on the severity of the offense charged.

## **II. The History of Compensation for Court Appointed Counsel in Tennessee.**

Before 1986, indigent criminal defendants obtained counsel primarily through a court-appointed counsel system coordinated through the office of the Executive Secretary to the Tennessee Supreme Court. Attorneys were compensated \$30.00 for work in court and \$20.00 per hour for work out of court. There was a \$1000.00 cap per case.

Beginning in 1986, the Tennessee Legislature established an indigent defense system that became a statewide public defender system. The public defender system is augmented by court-appointed counsel who serve when the public defender office cannot. Seventeen years ago this mechanism was criticized by members of the Tennessee Bar as “woefully inadequate.” As a result, the Tennessee Bar Association, the Tennessee Association of Criminal Defense Lawyers, the Criminal Justice Funding Crisis Group, the Tennessee District Public Defenders Conference, and the Capital Case Resource Center, filed a petition with the Tennessee Supreme Court seeking an amendment to Rule 13 including adequate compensation for court-appointed counsel in those cases in which the public defender’s office cannot serve as counsel. The Supreme Court considered the petition and responses from the executive and legislative branches of government. The Court created the Indigent Defense Commission, headed by former Attorney General William Leech. The Court directed the Commission to develop and recommend a comprehensive plan for delivery of legal services to indigent citizens charged with criminal law violations in the state court

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*Indigent Defense Commission Report to the Supreme Court*, p. 1 (August, 1996) (Hereinafter Report). The criticism was leveled in 1993 and led to the petition that was filed with the Supreme Court in 1994.

Report, p. 1. The report is attached as Exhibit A.

The petition is included as a part of Exhibit A.

system.

The plan was to include “[a] schedule of reasonable compensation to be paid private attorneys appointed to represent indigent defendants.”

The Commission was told that the plan should include a schedule of reasonable compensation to be paid private attorneys in court-appointed cases, a determination of the total funds to be budgeted each year for the payment of private attorneys appointed by the courts to represent indigents, and a statement of appropriate procedures for reviewing claims submitted for compensation by these private attorneys. The Commission was also charged with determining reasonable caseloads for public defenders and for setting standards for criminal defense attorneys appointed to represent indigent defendants.

The Commission undertook an extensive study of the indigent defense system. In its report to the Court it stated:

The provision of competent counsel is a constitutional mandate. The responsibility of meeting this mandate is not limited to the criminal defense bar of this state, but is a societal responsibility. The criminal justice system suffers from a shortage of competent lawyers who are qualified and willing to accept appointments in criminal matters. Neglecting this problem, seriously undermines public confidence in the criminal justice system. What is needed is a system which (1) rewards attorneys appropriately for becoming qualified to accept appointments in criminal cases and for making themselves available for such appointments, and (2) exacts an appropriate cost from attorneys who

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Ibid.

Supreme Court Order 01501-9307-OT-00144 § III (4) d (Tenn. 1994).

Report at p. 3.

either are not qualified or not willing to handle these cases.

Although the Commission was unable to agree on caseload standards and monitoring of public defender cases, the Commission cited a study by the Spangenberg Group which found that in 1992 the average overhead for attorneys accepting appointments in criminal cases was \$47.26 per hour. Eventually the Court modified Rule 13 and set rates at \$40.00 for trial preparation and \$50.00 for in-court-time, and placed maximum compensation rates depending on the type of case handled by the court-appointed attorney. Except for capital cases, this amount has not been increased in 16 years, since 1994.

### **III. Argument**

#### **1. The Current Hourly Rate for Private Court-Appointed Counsel in Criminal Cases Is Preventing Competent Attorneys from Continuing to Provide Representation to Indigent Defendants.**

Justice is not free. If we want a fair and just criminal system we must be willing to pay for it. This petition seeks to address the problem with the failure to fairly and adequately compensate court appointed counsel. It is critical that the criminal justice system attract and retain private court-appointed attorneys. As the Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice stated in 1963:

[It] should be understood that governmental obligation to deal effectively with problems

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Report at p. 15.

Often called the *Allen Report*, after the Chairman of the Committee Francis A. Allen.

of poverty in the administration of criminal justice does not rest or depend upon some hypothetical obligation of government to indulge in acts of public charity. . . .

[The] obligation of government in the criminal case rests on wholly different considerations and reflects principles of much more limited application. The essential point is that the problems of poverty with which this Report is concerned arise in a process *initiated* by government for the achievement of basic governmental purposes. It is, moreover, a process that has as one of its consequences the imposition of severe disabilities on the persons proceeded against. Duties arise from action. When a course of conduct, however legitimate, entails the possibility of serious injury to persons, a duty on the actor to avoid the reasonably avoidable injuries is ordinarily recognized. When government chooses to exert its powers in the criminal area, its obligation is surely no less than that of taking reasonable measures to eliminate those factors that are irrelevant to just administration of the law but which, nevertheless, may occasionally affect determinations of the accused's liability or penalty. While government may not be required to relieve the accused of his poverty, it may properly be required to minimize the influence of poverty on its administration of justice. . . .

[The] essence of the adversary system is challenge. The survival of our system of criminal justice and the values which it advances depend upon a constant, searching, and creative questioning of official decisions and assertions of authority at all stages of the process. The proper performance of the defense function is thus as vital to the health of the system as the performance of the prosecuting and adjudicatory functions. It follows that insofar as the financial status of the accused impedes vigorous and proper challenges, it constitutes a threat to the viability of the adversary system.

The Indigent Defense Commission recognized the need for experienced court appointed counsel in criminal cases. The Commission recommended qualification standards for counsel appointed in criminal cases. More serious cases require more experienced and more qualified counsel. The Commission differentiated between the qualifications necessary for counsel appointed in a misdemeanor case, a minor felony or a major felony case. The bottom line is that one size does not fit all. It is imperative that the criminal justice system not only provide someone with a law license to represent the accused but an attorney with the requisite experience to ensure the effective assistance of counsel. The low compensation rates for court appointed counsel make it financially impossible for experienced lawyers to continue to accept state court appointments.

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Report, pp. 17-18.

The rates set in 1994 did not enable court-appointed counsel to meet overhead expenses. Those same rates exist in 2010. The Commission found a need to suggest increasing fees sixteen years ago to permit “more competent attorneys to perform more competent work without feeling they are undermining their practices in the process.” Since 1994, the pool of qualified, experienced attorneys has continued to evaporate. The stagnant rates do not permit experienced lawyers to accept state court appointed work because the rate of pay does not even enable counsel to meet overhead expenses.

What is happening to indigent defense in Tennessee is identical to the findings of the the American Bar Association Standing Committee on Legal Aid and Indigent Defense. SCLAID held a series of public hearing in 2003, the 40<sup>th</sup> anniversary of *Gideon*, to determine the extent to which the promise of *Gideon* was being met by state indigent defense systems. “Overall, our hearings support the disturbing conclusion that thousands of persons are processed through America’s courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation. . . . While there are many reasons why our justice systems far too often convict innocent persons, clearly one of the best bulwarks against mistakes is having effective, well-trained lawyers.”

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Report, pp 15-16.

*Gideon’s Broken Promise: American’s Continuing Quest for Equal Justice*, A Report on the American Bar Association’s Hearings on the Right to Counsel in Criminal Proceedings.

*Gideon’s Broken Promise*, Executive Summary p. iv. The Innocence Project cites underpaid, under-qualified counsel as a major cause for wrongful convictions. <http://www.innocenceproject.org/understand/Bad-Lawying.php>.

The major culprit in the failure to provide the effective assistance of counsel is the failure to adequately fund indigent defense. “Quality legal representation cannot be rendered unless indigent defense systems are adequately funded. Attorneys who do not receive sufficient compensation have a disincentive to devote the necessary time and effort to provide meaningful representation or even participate in the system at all. With fewer attorneys available to accept cases, the lawyers who provide services often are saddled with excessive caseloads, further hampering their ability to represent their clients effectively.”

Inadequate funding leads to fewer competent attorneys available for court appointed work and leads to a shortage of attorneys to serve as mentors and roll models for younger attorneys who are willing to accept court appointments. The result is that the pool of attorneys available for court appointments often is left to lawyers who cannot find other work. The ABA reports concludes “[t]aken as a whole, glaring deficiencies in indigent defense services result in a fundamentally unfair criminal justice system that constantly risks convicting persons who are genuinely innocent of the charges lodged against them.”

## **2. Compensation for Court-Appointed Counsel Should Be Increased Immediately to a Rate Sufficient to Recruit and Retain Experienced Attorneys With a Built in Cost of Living Increase.**

The rate of compensation for court appointed counsel in Tennessee has not changed in sixteen years. The rate was inadequate in 1994 and the problem of inadequate compensation has not been addressed since 1994. There is only one solution: adequate compensation. As the ABA report notes, “assigned counsel should be paid a reasonable hourly fee in addition to actual overhead and expenses. .

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*Gideon’s Broken Promise*, p. 7.

*Gideon’s Broken Promise*, p. 7.

. .” The ABA report includes testimony from Judge Michael Spearman, Chief Criminal Judge, King County Superior Court, Seattle, Washington:

In a time of tight budgets, it is easy to be shortsighted and think that a public defender office staffed with less expensive, inexperienced attorneys is a better option. But my experiences as a staff attorney, a supervisor, and a judge tell me that experienced attorneys more than compensate for the expense in what they bring to the justice system. Experienced attorneys encourage prompt resolutions of criminal cases. They are able to evaluate cases and make reasonable plea agreements more quickly. Their experience is recognized by their clients and contributes to good attorney-client relationships. With experienced attorneys, the cases that go to trial are more likely to be the cases that need to be tried and should be tried. Trials are more efficiently done because the lawyers are better prepared and more focused, and any judge will tell you that the best trials are those done with experienced lawyers on both sides. The results are more fair. There are fewer mistrials and fewer reversals on appeal because appropriate motions and objections give the trial court the opportunity to prevent or correct errors in a timely manner. All of these are advantages to the system that result in financial savings and enhance public confidence in criminal justice.

### **3. Federal CJA Compensation Rates Serve as a Guideline for an Acceptable Rate of Compensation.**

Many of the lawyers who formerly accepted criminal court appointments in state court still accept appointments in federal court because the hourly rate for non-capital cases continues to attract and retain competent criminal defense attorneys. A recent review of Criminal Justice Act (CJA) compensation in federal court reveals that as of **January 1, 2010** , the hourly rate for non-capital cases is **\$125** per hour, with a cap of **\$9,700** for felony offenses. The hourly rate scheme recognizes the fact that there is no meaningful distinction between out-of-court and in-court work performed by defense

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*Gideon’s Broken Promise*, p. 9.

*Gideon’s Broken Promise*, p. 17.

CJA Panel Rates Information Sheet, United States District Court, Eastern Division of Tennessee, [http://www.tned.uscourts.gov/cja\\_rates.php](http://www.tned.uscourts.gov/cja_rates.php). The rates were increased to \$125 per hour in 2010.



counsel. In fact, often the most difficult and most important work performed in any criminal case is performed outside the courtroom.

On March 19, 2009, Circuit Judge Julia Smith Gibbons of the Sixth Circuit Court of Appeals addressed Congress concerning the federal judiciary's request for an increase in CJA rates.

We request your consideration of the program enhancement in our budget that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$10.2 million to increase the non-capital rate

to \$142.00 per hour, effective January 2010. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially eligible defendants in federal court in accordance with the Criminal Justice Act (CJA). In the fiscal year 2009 omnibus spending bill, the Subcommittee approved an increase in the noncapital rate paid to these panel attorneys from \$99 to \$110 per hour, and provided a cost-of-living adjustment to the capital rate from \$170 to \$175 per hour. These new rates took effect for work performed on or after enactment of the fiscal year 2009 appropriation. While we are very appreciative of the increase to \$110 per hour for non-capital work, we believe a more significant increase is required to enable the courts to attract and retain enough qualified attorneys to accept appointments and to provide them a fair rate of pay. This is critical in order for the Judiciary to ensure that persons represented by panel attorneys are afforded their constitutionally guaranteed right to effective assistance of counsel.

We believe there is a direct relationship between the lack of qualified panel attorneys available to take CJA appointments and the significant financial difficulties panel attorneys encounter maintaining their legal practices. Predominantly solo and small-firm lawyers take on CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of approximately \$70 per hour, at the \$110 rate, that leaves a net average of only \$40 per hour, before taxes. We believe that this net rate of \$40 per hour, when compared to the net national average 'market rate' of \$176 per hour for non-CJA private criminal cases, prevents courts from attracting sufficient numbers of qualified attorneys to take CJA appointments because those attorneys can obtain higher pay on non-CJA cases. Each time a panel attorney is asked by the court to accept a non-capital CJA appointment, he or she must consider the inherent "opportunity" cost associated with the higher hourly rate he or she could otherwise bear on a non-CJA case. . . .

I will close on this topic by reiterating that the Judiciary greatly appreciates the \$110 non-capital rate Congress provided in fiscal year 2009, but the concern remains that, after overhead is considered, the rate still does not provide compensation that will attract enough qualified panel attorneys to take on the complex work involved in federal criminal cases. I urge the Subcommittee to provide the funding necessary to increase the

non-capital panel attorney rate to \$142 per hour in fiscal year 2010.

The experienced lawyers who accept federal non-capital CJA appointments are the same lawyers needed to accept appointments in state cases. The overhead is the same. The need for a fair rate of compensation is the same. The need to attract these attorneys in order to provide the constitutionally guaranteed effective assistance of counsel is the same. If state court rates are far outstripped by the federal rates most, if not all, of the experienced private attorneys will be across the street.

#### 4. Comparison of Compensation for Court-Appointed Counsel with District Attorneys, Public Defenders, and Judges.

District Attorneys and District Public Defenders are employed by the State of Tennessee and their wages are paid by the State of Tennessee. The court-appointed attorney, although not technically a government employee, serves the government in the performance of the government's duty to provide the effective representation of counsel to the accused in criminal cases. The work provided by court-appointed counsel is no less essential to the proper functioning of the criminal justice system than that provided by district attorney generals and district public defenders.

District Attorney Generals' salaries are regulated by T.C.A. § 8-7-201, *et. seq.* Their salaries are increased based on pay increases provided to all state employees by the general appropriations act. T.C.A. § 8-7-201(e)(2). In 1994, the District Attorney General's annual salary was \$81,749.52.

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Statement of Honorable Julia S. Gibbons, Chair Committee on the Budget of the Judicial Conference of the United States before the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the United States House of Representative, March 19, 2009.

CJA rate was increased to \$125.00 per hour in 2010.

Tennessee District Attorney General Conference.

Annual raises were approximately 2% until 2006 when a District Attorney General received approximately a 25% increase. In December of 2007, District

Attorney Generals were receiving \$136, 392 per year. Since 1994 to 2007, the salary has increased \$54,643 or 66%.

In 1994 a District Public Defender's salary was 88% of that of a District Attorney General or \$71,939.12. In 1995, the District Public Defender received the same salary as the District Attorney General. In 2007, the District Public Defender made \$136,392 per year. From 1994 to 2007, the District Public Defender has received an increase in salary of \$64,453, which is an increase of approximately 90%.

Judges' salaries are set forth in T.C.A. § 8-23-103 and are based on the salaries set for trial judges with appellate judges receiving adjusted salaries based on the level of the appellate court. Pay increases for judges are calculated by using the Consumer Price Index. In 1990, a trial judge's salary was \$78,000. Effective in 2006, the base pay for trial judges was \$140,000, approximately a 78% increase from 1990.

The increases in the respective salaries of judges, district attorney generals and public defenders reflect the economic necessity and practice of compensating these public servants at a rate that will attract and retain competent, qualified persons for these offices. It is equally important to attract and retain private attorneys to accept court appointments in criminal cases.

The goal in providing lawyers, as Gideon emphasized, is to assure fairness in our adversary system of justice and prevent the conviction of innocent persons. Yet, forty years after Gideon, this nation is still struggling to implement the right to counsel in state criminal and juvenile proceedings. Sadly, there is abundant evidence that systems of indigent defense routinely fail to assure fairness because of underfunding and other problems. It is also more evident now than ever before that innocent persons, sometimes represented by incompetent, unqualified, or overburdened defense lawyers, are

convicted and imprisoned.

Prayer for Relief

For the foregoing reasons, the Petitioner respectfully prays that this Court:

1. Entertain this Petition and the supporting materials setting out the jurisdictional, factual, and legal basis for this claim and any other matters that this Court deems appropriate;
2. Set this matter for hearing.
3. Invite the participation of other interested parties, if it deems it appropriate.
4. Implement amendments to Supreme Court Rule 13 proposed by the Petitioner consistent with the spirit and letter of the law and consistent with this Petition.

Respectfully submitted,

Jerry P. Black, Jr., President  
Tennessee Association of Criminal Defense Attorneys

Michael Whalen, Chair  
Ad Hoc Indigent Defense Committee

Stephen Ross Johnson, Treasurer  
Tennessee Association of Criminal Defense Attorneys

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Norman Lefstein, In Search of Gideon's Promise: Lessons from England and the Need for Federal Help, 55 Hastings L.J. 835, 838 (2004).



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August 31, 2011

BY FEDERAL EXPRESS

Michael W. Catalano, Clerk  
Tennessee Supreme Court  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

**RE: Proposed Amendment to Tennessee Supreme Court Rule 13, Section 7**

Dear Mr. Catalano:

Enclosed are the original and seven copies of the Comment of the Tennessee Association of Criminal Defense Lawyers in reference to the above matter. Please send me a time-stamped copy for our records. For your convenience, I have enclosed a self-addressed envelope.

Thank you for your assistance.

Sincerely yours,

RITCHIE, DILLARD, DAVIES & JOHNSON, P.C.



STEPHEN ROSS JOHNSON

SRJ:kem  
Enclosures

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**IN RE: RULE 13, SECTION 7,  
RULES OF THE TENNESSEE SUPREME COURT  
NO. M2011-01411-SC-RL2-RL**

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The Tennessee Association of Criminal Defense Lawyers (TACDL), responds to the Supreme Court's invitation for comments on the proposed change to Tennessee Supreme Court Rule 13, section 7, authorizing the Administrative Office of the Courts (AOC) to contract with lawyers, law firms or associations of lawyers to provide legal services to indigent persons.

TACDL is a non-profit corporation chartered in Tennessee in 1973. It has over 750 members statewide, mostly lawyers actively representing criminal defendants. TACDL seeks to promote study and provide assistance within its membership in the field of criminal law. TACDL is committed to advocating the fair and effective administration of criminal justice. Its mission includes education, training, and support to criminal defense lawyers, as well as advocacy before courts and the legislature of reforms calculated to improve the administration of criminal justice in Tennessee.

TACDL believes that the proposed rule change should be rejected. As worded, the change does not clearly identify the problems to be addressed and is ambiguous in the scope of legal and support services that will be affected or offered. In terms of the delivery of services for the defense of indigent citizens accused of crimes, the proposed change to Rule 13 creates a large number of known and unknown ethical issues for attorneys and the judiciary to navigate. The burden, financially and administratively, to every component of the criminal justice system will undoubtedly increase, with no way under the proposed rule to gauge the magnitude of the impact. The proposed change also comes at a time when the Supreme Court has been asked to review the hourly rates for critical, constitutional services. Those rates have not been adjusted in 17 years.

Foremost, considerable confusion exists in legal circles about the type of cases that the proposed change will encompass. Public and private remarks and discussions have engendered enormous confusion. Inconsistent signals have been sent and received. If the proposed change is not intended to encompass the delivery of services for the defense of indigent citizens accused of crimes, then section 7 should be revised to telegraph that intent in a clear and unambiguous fashion. Likewise, if section 7 is intended to operate as a "pilot program" only in certain areas of indigent representation, that intent should be communicated

transparently. TACDL stands willing and prepared to assist the Court in these efforts.

Regarding ethical issues in the realm of criminal defense representation, the proposed change must be thoroughly considered and evaluated, inter alia, in light of an attorney's ethical responsibilities to be competent, to devote the required attention and preparation, as determined in part by what is at stake, to avoid pressure to quickly resolve a matter in order to maintain earnings, and to avoid conflicts of interest. The Court should consider inviting specific comments on the ethical efficacy of the proposed rule as applied to the delivery of services for the defense of indigent citizens accused of crimes.

The January 15, 2011 Report by the Administrative Office of the Courts to the 107<sup>th</sup> Tennessee General Assembly correctly emphasizes that the real growth in indigent legal service spending is in the non-criminal area, particularly with the growing demand for legal services involving the welfare of children, both in juvenile and trial courts. The AOC Report estimates that spending in child welfare proceedings now accounts for almost 35% of total spending from the indigent defense fund.

The language of the proposed rule specifically states that contract attorneys are to be given first priority for appointment to any case where a district public defender is not available or eligible for appointment. That language appears directly at odds with the AOC Report's acknowledgement that the contract system of delivering indigent legal services has been roundly criticized and with the Report's assessment that the current system is likely the best system of its kind for the purposes for which it is being used.

In addition, it should be recognized that implementing the proposed rule would exacerbate the problems with the current hourly rate structure under Rule 13. The proposed rule makes it clear that while the contract should not be based solely on the low bidder basis, it should in no case be for more than allowed under the current Section 2. Those seeking contracts will have to agree to provide legal services for no more than the current hourly rates, which have not been adjusted in 17 years. TACDL notes that it currently has a petition pending before the Court to increase the hourly rates, yet no action has been taken. Insisting that lawyers fight to the bottom as they continue to provide indigent defense services extraordinarily below average overhead rates perverts the cause of justice in Tennessee.

TACDL further believes that implementation of the proposed rule would increase indirect costs to the system. In an address to the National Association of Criminal Defense Lawyers in February of 2010, Attorney General Eric Holder wisely observed, "When the justice system fails to get it right the first time, we all



pay, often for years, for new filings, retrials, and appeals. Poor systems of defense do not make economic sense.”

In the studies done thus far, contracting seems to fall into the “poor systems” category. Quality of representation goes down and any reduction in initial costs stand to be consumed by post-conviction and constitutional challenges through litigation.

TACDL can foresee that implementation of the proposed rule would increase the burden on understaffed public defender offices. Pursuant to Rule 13, Section 7(c), contract attorneys shall be given first priority for appointment to any case “where a district public defender is not available or eligible for such appointment” and in which the litigant is otherwise entitled to the appointment of counsel pursuant to this rule. From the plain language of the proposed rule, it could be understood to mean that District Public Defenders should be appointed in cases other than criminal defense with contract counsel available in the event of a conflict. This eventuality would substantially increase the population of cases that public defenders would be required to cover.

Should the Court determine to implement a contract system despite these concerns, TACDL suggests that the intent of the proposed rule be clarified in two ways. First, the following suggestion adds language limiting the contract system to mental health proceedings, child support contempt, and child welfare proceedings:

#### Section 7. Contracts for Indigent Representation.

(a) In addition and as an alternative to the procedures for appointment and compensation of court-appointed counsel for judicial hospitalization, child support contempt, and child welfare proceedings, the Administrative Director is authorized to enter into contracts for such services with attorneys, law firms, or an association of attorneys. Such contracts may establish a fixed fee for representation in a specified number and type of cases; provided, however, that any such fixed fee shall not exceed the rates specified in Section 2.

Second, the language referring to the public defender’s office in Section (c) of the proposed rule should be struck as its inclusion explicitly allows application to indigent criminal cases, which is apparently inconsistent with what has been communicated to the organized bar as the proposed rule’s intention. Therefore, it is suggested that the proposed rule be amended to state:

(c) Attorneys providing legal services under any contract entered into pursuant to this Section shall be given first priority for appointment to any case for such appointment and in which the litigant is otherwise entitled to the appointment of counsel pursuant to this rule.

In conclusion, it is TACDL's position that the institution of a contract system for the delivery of indigent defense services, criminal or non-criminal, should be rejected. The above-suggested revisions to the proposed rule are provided, however, in the event the Court is inclined to adopt such a system in non-criminal cases.

For all these reasons, TACDL maintains that the proposed Rule 13 change be rejected.

Respectfully submitted this 31<sup>st</sup> day of August, 2011, by:



STEPHEN ROSS JOHNSON [BPR# 022140]

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