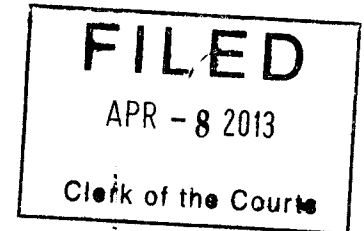


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE RULE 13, SECTION 1(d)(1),
RULES OF THE TENNESSEE SUPREME COURT

No. M2013-00837-SC-RL2-RL



ORDER

The General Assembly recently passed resolutions ratifying the rules amendments adopted by the Court in orders filed on December 18, 2012, and the amendments therefore will take effect on July 1, 2013. Those amendments include the adoption of new Tenn. R. Crim. P. 36.1, which establishes a procedure for seeking correction of an illegal sentence. In pertinent part, paragraph (a) of Rule 36.1 authorizes either the defendant or the State to file a motion to correct an illegal sentence. Paragraph (b) of the rule goes on to state: "If the motion states a colorable claim that the sentence is illegal, and if the defendant is indigent and is not already represented by counsel, the trial court shall appoint counsel to represent the defendant."

As a result of the adoption of the new procedure for seeking correction of an illegal sentence, the Court is considering an amendment to Tenn. Sup. Ct. R. 13. The amendment would add proceedings initiated pursuant to Tenn. R. Crim. P. 36.1 to the proceedings listed in Tenn. Sup. Ct. R. 13, § 1(d)(1) and, if ultimately adopted by the Court, would take effect on July 1, 2013. The Court hereby publishes the proposed amendment for public comment and solicits written comments on the proposal from judges, lawyers, interested organizations, and the public. The proposed amendment to Tenn. Sup. Ct. R. 13, § 1(d)(1) is set out in the Appendix to this order. Written comments concerning the proposed amendment shall be received by the Clerk on or before Wednesday, May 8, 2013. Comments should be addressed to:

Michael W. Catalano, Clerk
Re: Tenn. Sup. Ct. R. 13, § 1(d)(1)
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

PROPOSED AMENDMENT TO TENN. SUP. CT. R. 13, § 1(d)(1)

[For context, the current text of relevant portions of Tenn. Sup. Ct. R. 13, § 1 is set out below; the amended text is indicated by underlining (new text) and ~~overstriking~~ (deleted text).]

Section 1. Right to counsel and procedure for appointment of counsel.

(a)(1) The purposes of this rule are:

(A) to provide for the appointment of counsel in all proceedings in which an indigent party has a statutory or constitutional right to appointed counsel;

(B) to provide for compensation of appointed counsel in non-capital cases;

(C) to establish qualifications and provide for compensation of appointed counsel in capital cases, including capital post-conviction proceedings;

(D) to provide for payment of expenses incident to appointed counsel's representation;

(E) to provide for the appointment and compensation of experts, investigators, and other support services for indigent parties in criminal cases, parental rights termination proceedings, dependency and neglect proceedings, delinquency proceedings, and capital post-conviction proceedings;

(F) to establish procedures for review of claims for compensation and reimbursement of expenses; and

(G) to meet the standards set forth in Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996.

(2) The failure of any court to follow the provisions of this rule shall not constitute grounds for relief from a judgment of conviction or sentence. The failure of appointed counsel to meet the qualifications set forth in this rule shall not be deemed evidence that counsel did not provide effective assistance of counsel in a particular case.

(b) Each trial court exercising criminal jurisdiction shall maintain a roster of attorneys from which appointments will be made. However, a court may appoint attorneys whose names are not on the roster if necessary to obtain competent counsel according to the provisions of this rule.

(c) All general sessions, juvenile, trial, and appellate courts shall appoint counsel to represent indigent defendants and other parties who have a constitutional or statutory right to representation (herein "indigent party" or "defendant") according to the procedures and standards set forth in this rule.

(d)(1) In the following cases, and in all other cases required by law, the court or appointing authority shall advise any party without counsel of the right to be represented throughout the case by counsel and that counsel will be appointed if the party is indigent and requests appointment of counsel.

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

(B) Contempt of court proceedings in which the defendant is in jeopardy of incarceration;

(C) Proceedings initiated by a petition for habeas corpus, early release from incarceration, suspended sentence, or probation revocation;

(D) Proceedings initiated by a petition for post-conviction relief, subject to the provisions of Tennessee Supreme Court Rule 28 and Tennessee Code Annotated sections 40-30-101 et seq.;

(E) Parole revocation proceedings pursuant to the authority of state and/or federal law;

(F) Judicial proceedings under Tennessee Code Annotated, Title 33, Chapters 3 through 8, Mental Health Law;

(G) Cases in which a superintendent of a mental health facility files a petition under the guardianship law, Tennessee Code Annotated, Title 34; and

(H) 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; and

(I) Proceedings initiated pursuant to Tenn. R. Crim. P. 36.1 and in which the trial court, pursuant to Tenn. R. Crim. P. 36.1(b), has determined that the motion states a colorable claim for relief.

(2) * * * *

[end of Appendix]