

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: SUPREME COURT RULE 13**

**No. M2007-02331-SC-RL1-RL - Filed: November 6, 2007**

**ORDER**

On October 16, 2007, Billable Hours, Inc., and Robert L. Foster, Esq., filed a petition asking the Court to amend Rule 13, Rules of the Tennessee Supreme Court, “to expressly confirm the acceptability of submission of fee and expense claims by appointed counsel through a claims processing agent or service and the dispatch of payments of such claims, made payable to appointed counsel, to the address of the claims processing agent, as described in the proposal [sic] Subsection (c) to Rule 13, Section 6 submitted with this Petition, or in such manner as the Court deems appropriate.” Exhibit B to the Petition sets out several proposed amendments to Rule 13, which amendments would permit an attorney filing a claim for compensation and/or reimbursement under Rule 13 to use a third-party agent or service to process and receive payment of the claim on behalf of the attorney.

The Court hereby publishes for public comment the proposed amendments to Rule 13 as set out in Exhibit B to the Petition, which is attached hereto as Appendix A. The Court hereby solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is December 6, 2007. Written comments should be addressed to:

Michael W. Catalano, Clerk  
Re: Rule 13 Comments  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order and the attached Appendix A to the Tennessee Association of Criminal Defense Lawyers, the Tennessee District Public Defenders Conference, the Attorney General & Reporter, the Tennessee District Attorneys General Conference and the Tennessee Bar Association. In addition, the Petition to Amend Rule 13, in its entirety, and this order and Appendix A shall be posted on the Tennessee Supreme Court’s website.

PER CURIAM

*APPENDIX A*

Exhibit B to Petition  
*In Re Supreme Court Rule 13*  
Proposed Language for Amendment of Supreme Court Rule 13

---

Delete the word “and” after Section (a)(1)(F), delete the period after Section (a)(1)(G), and insert a semicolon followed by the word “and” and a comma after Section (a)(1)(G). Then, add new subsection in Section 1(a)(1), as follows:

(H) to establish guidelines and procedures for preparation of claims by an agent on behalf of appointed counsel.

Add the following sentence to the end of Section 6(b)(3):

Payment “made directly” includes mailing the payment to any agent acting on behalf of appointed counsel under Section 6(c) of this Rule.

Add subsection (c) to Section 6, as follows:

(c) Claims for compensation and/or reimbursement may be prepared and submitted to AOC by an agent or processing service on behalf of appointed counsel. If the services of an agent or processing service are used, then the following provisions apply:

1. Appointed counsel shall ensure compliance with RPC 1.6 in regard to any information provided to the agent.

2. Before preparing any claim for submission to a trial court or the AOC, an agent shall file a notice with the director that provides to the director the name and address of agent (and the agent’s stockholders or partners, as applicable) and the name of the agent’s officers and/or managers. The notice shall contain a sworn statement by the agent that the agent will adhere to this rule, will not engage in any prohibited alteration of claims processed by the agent,

and will honestly and respectfully deal with the clerks, judges, and justices of the courts of this state and with the employees of the AOC. The notice shall state that agent (and the agent's stockholders or partners, as applicable) submit to the jurisdiction of this Court for any determinations made as to any claim processed by the agent and submitted to the director under this rule.

3. The notice described in subsection (c)(2) above may contain a specimen of any stamp certification(s) the agent will use in preparing claims. If a specimen stamp certification(s) is(are) included, then the notice shall also contain a statement that the agent's certification stamp(s) will not be placed on any claim submitted to a court or to the AOC unless the statements contained in the certification(s) is(are) true and accurate. If a specimen certification(s) is included with the notice, then the agent may comply with the certification provisions of this rule by affixing a stamped certification to any claim prepared by the agent. If no specimen certification(s) is(are) included with the original notice described in subsection (c)(2) above, then an amended notice may be filed with the director containing the specimen certification(s).

4. The services to be provided by the agent to appointed counsel must be set forth in a written agreement. Upon request of the director, a copy of the written agreement shall be provided to the director, but, because the proprietary business information of the agent is contained in the agreement, the agreement shall not be made a public record.

5. All claim forms must be signed by appointed counsel in duplicate and the preparation of a claim form by an agent shall not relieve appointed counsel of direct responsibility for the veracity of the claim form and all individual items in the claim form. If an agent is used for claim form preparation and/or processing, then the name of the agent must be submitted with or upon the claim form as follows: "This claim form (including any accompanying documentation) was prepared and/or processed on behalf of the appointed counsel

whose name appears upon this claim form by [*name and address of agent*], and accurately reflects the information provided by to the agent by the named attorney.” This certification must appear in blue on both original claim forms prior to the agent sending the original claim forms to the court for approval. Furthermore, the following additional certification must be submitted with the claim form after approval by the appointing court: “[*Name of agent*] certifies that the foregoing claim form and any accompanying documentation was prepared using information provided by the appointed counsel whose name appears upon this claim form and that no alterations have been made to the claim other than this certification since the court approved this claim.” This certification, shall appear in blue either on the front or back of the first page of both original claim forms.

6. The agent shall mail one original claim to the appropriate court clerk for filing and forward the other original to the director. The agent shall attach a copy of the order appointing counsel to the original claim forwarded to the director (along with the original certification for extended and complex representation, if such a certification exists).

7. For purposes of the 180 day filing rule, the filing date shall be determined to be the date the appropriate judicial official executed and dated the claim.

8. Appointed counsel shall retain a copy of all documentation related to time and expenses provided to an agent, in paper or electronic format. The agent shall maintain, in either paper or electronic format, copies of all time records and other documentation provided by its principals. The agent shall also retain, in either paper or electronic format, a copy of all claim forms submitted to a court on behalf of its principals and shall provide copies upon request to the trial court, the director, or appointed counsel.

9. Payment shall be made only in the name of the appointed counsel and only with the taxpayer identification number of appointed counsel. Upon written request of appointed

counsel, payment and all accompanying documentation relating to a claim shall be mailed to appointed counsel in care of the agent at the agent's mailing address. Such written request from an individual attorney shall remain in force until revoked in writing signed by the attorney and the agent. As long as the written request remains in effect, payment to the address of the agent is payment to appointed counsel, subject to any dispute regarding the amount of the payment.

10. After having received notice of an agent's involvement, the director shall deal directly with such an agent to resolve administrative, statistical, and other issues that are capable of being resolved without the direct involvement of appointed counsel. The director shall provide an agent, upon the agent's request, information relating to a claim that the agent submitted on behalf of appointed counsel. If the director requires further information, such as for an audit of a claim, the director shall first request further documentation from the agent. The agent shall obtain the requested information from its principal to the extent such information is available and forward the information to the director promptly. Nothing in this rule shall prohibit the director from contacting an appointed attorney directly and an agent shall facilitate direct contact with appointed counsel when requested by the director.

11. An agent, prior to submitting any claims to an appointing court to which it has not submitted claims in the past, shall contact that court in writing and make known to that court that the agent will be preparing and/or processing claim forms for attorney(s) practicing in that court. The written notification to the trial court shall include a copy of this section of Rule 13.

12. When submitting claims for approval by a court, the agent shall provide the appropriate court, judge, justice, or other judicial official with two original claims for approval and a copy of the order appointing counsel, along with a self addressed stamped envelope for return of the claim forms and order to the agent. Once the court, judge, justice, or other judicial

official acts upon the claim, then the official shall return the claim to the agent, so long as the agent provided to the official proper self-addressed stamped mailing containers.

13. If a claim requires an extended and complex motion and certification, the agent shall forward the motion, executed by appointed counsel, to the appropriate court clerk to be filed and shall attach a copy to the original claims provided to the court for approval. In the event the court certifies the matter as extended and complex, the court shall forward the original certification along with its accompanying claims to the agent and the agent shall forward the original certification with the claim form to the director, and the agent shall maintain a copy of such certification in paper or electronic format.

14. An agent shall not alter a claim or any accompanying documentation or certification in any manner after the claim form has been executed by a judicial official, other than by placing the agent's required certification upon the claim form, or upon request of the director.

15. If the director determines that any agent is violating the provisions of this rule, is altering claim forms so that the claims do not reflect appointed counsel's time and expenses as provided to the agent by appointed counsel, or is altering any claims after approval by the court, other than as provided for in this rule, then the director shall issue a written notice to the agent setting forth the exact items asserted to have violated this rule or to have deviated from the time and expenses provided by appointed counsel. The notice shall provide the agent a reasonable time of not less than thirty (30) days to correct all existing problems and bring all claims into compliance with this rule and other applicable law. If the agent fails to rectify the problems identified by the director, then the director may refuse to process further claims prepared, processed, and/or submitted by that agent and shall issue a notice of refusal to process further claims. The notice of refusal must be in writing. The director, however, shall process any and

all claims that were executed and approved by appointed counsel prior to the date of the notice of refusal, so long as no such claims were improperly altered by the agent. Any agent whose principals' claims the director refuses to process may file a petition with this Court for review of the decision of the director. Any agent may request a hearing within ten (10) days of the director's refusal to process claims. If a hearing is not requested or after a hearing the director's refusal is affirmed by the Court, then the director shall send notice to all attorneys for which that agent has prepared and processed claims for in the last three (3) months, stating the actions taken by the AOC and/or the Court.