

## AOC CONTRACTS UNDER RULE 13 AMENDMENT

A recent Tennessee Supreme Court order authorizes the AOC to enter into contracts for representation of indigent litigants by attorneys working on cases pursuant to Sup. Ct. Rule 13.

To clarify what this amendment does and does not do:

Rule 13 amendment DOES:

- Authorize the AOC to enter into one or more contracts for representation of indigent parties in child support contempt, judicial hospitalization (emergency involuntary commitments) and child welfare cases (dependency and neglect and termination of parental rights)
- Authorize contracts with individual attorneys, firms, or an association of attorneys
- Require the AOC to monitor the use of any such contracts for their effectiveness in providing quality legal representation and to annually report its findings to the Supreme Court.

Rule 13 amendment DOES NOT:

- REQUIRE the AOC to enter into any contracts for any of the listed services
- Authorize the AOC to contract for representation of indigent defendants in criminal cases
- Contemplate that a large firm or association of attorneys will displace lawyers currently doing indigent work in any location and certainly not statewide
- Require the AOC to engage in a bidding process for contracts or to award contracts based on a low bid

The amendment to Rule 13 represents an expansion of the authority given to the AOC by the Supreme Court in 2012, when a pilot project was launched to study the feasibility and effectiveness of contracting with attorneys in Davidson County Juvenile Court to represent indigent defendants facing contempt charges for non-payment of child support. That project will terminate on December 31, 2014, and a copy of the report to the Supreme Court on the results of the project from July 1, 2012 to June 30, 2013 may be viewed here:

[http://www.tncourts.gov/sites/default/files/docs/pilot\\_project\\_report.pdf](http://www.tncourts.gov/sites/default/files/docs/pilot_project_report.pdf)

The Davidson County pilot project was undertaken, in part, because average fee claims for child support representation there exceeded the statewide average for those cases by a significant amount. The pilot project proved successful, and it is this kind of targeted approach that the AOC intends to take going forward.

One of the first areas that the AOC will be addressing with the use of contracts is representation of individuals in judicial hospitalization cases in Shelby County. Over the years, the overall cost of that representation has been very high, even though individual fee claims admittedly have not. This is the result of a system that by design may have attorneys billing for repetitive tasks in increments that, although small, nonetheless appear to be a distortion of the time actually needed to complete the tasks being billed.

For example, attorneys typically bill one-tenth (0.1) of an hour to prepare the order appointing that attorney to the case. This sounds more than fair until one realizes that the order is a single document that simply lists the names of anywhere between 20 and 30 clients who have hearings scheduled for the same day. Billing at this rate results in a claim by the attorney that

he/she spent between 2 and 3 hours preparing a 1 page document and making additional copies for each case. That task likely takes only a few minutes total.

The AOC has determined that this system of billing for these cases cannot continue, as it represents a significant unnecessary cost to the indigent fund. Beginning in January 2015, the AOC will be entering into contacts and attorneys taking these cases will be paid a flat rate per docket they handle.

Judges will continue to have the discretion to assign attorneys, but only attorneys who have agreed to do this work on these terms will receive appointments. Attorneys will simply submit an invoice to our office (as opposed to completing numerous fee claims) for each docket along with a copy of the order appointing him or her to that docket, and a notation from the judge that the cases are complete and ready to be paid. Because an invoice does not require auditing, attorneys will be paid faster. They will, without a doubt, be paid less than they currently are, but the AOC believes they will receive reasonable compensation for the time truly spent on a docket.

Other similar contractual arrangements are being considered, primarily in the same area of judicial hospitalizations. The AOC is committed to including in future discussions those attorneys who have previously worked on any of the types of cases in any of the areas where contracts are considered.

The goal is not to displace attorneys who currently do the work; the goal is to manage the resources given to the indigent fund by the legislature in the most efficient way possible. When we can demonstrate this, our requests to the legislature and to the administration for additional funds to increase rates of compensation are much more likely to be favorably received.

Please feel free to contact the AOC with any comments or concerns: David Haines, AOC General Counsel (615) 741-2687. [dhaines@tncourts.gov](mailto:dhaines@tncourts.gov).