

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

12/29/2025

Clerk of the
Appellate Courts

**IN RE: ADOPTION OF RULE 56 OF THE TENNESSEE SUPREME
COURT - APPOINTED COUNSEL COMMISSION**

No. ADM2025-02019

ORDER

During the 2025 legislative session, the Governor proposed and the General Assembly appropriated funds to the Administrative Office of the Courts for the Tennessee Supreme Court to establish the Appointed Counsel Commission (“Commission”). The purpose of the Commission is to retain and provide counsel in certain civil and criminal proceedings in which an indigent party has a right to appointed counsel. Effective immediately upon the filing of this Order, the Court hereby adopts Rule 56, Rules of the Tennessee Supreme Court, as set out in the Appendix to this Order, which creates the Commission, defines the purpose and composition of the Commission, sets forth the duties of the Commission, and establishes the requirements for the appointment of counsel by the Commission.

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

IT IS SO ORDERED.

PER CURIAM

APPENDIX

TENN. SUP. CT. R. 56

APPOINTED COUNSEL COMMISSION

Tennessee Supreme Court Rules, Rule 56

Rule 56. Appointed Counsel Commission

PREAMBLE

The Appointed Counsel Commission (the “Commission”) is created as a part of the judicial branch of government by the Supreme Court of Tennessee under its inherent authority to regulate courts. The Supreme Court appoints the members of the Commission and has general supervisory authority over the Commission’s actions.

Section 1. Purpose and Composition of the Commission.

(a) Purpose of Appointed Counsel Commission. The Commission and the Office of the Appointed Counsel Commission (“Office”) as set forth herein, are created for the following purposes:

(1) To retain and provide counsel in the following cases and proceedings in which an indigent party has a right to appointed counsel and in criminal matters where the Public Defender is unable to provide representation because of a conflict of interest under Tennessee Rules of Professional Conduct 1.7:

(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 Tenn. Sup. Ct. R. 28 and Tenn. Code Ann. §§ 40-30-101 et seq.;

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

(F) Judicial proceedings under Tenn. Code Ann. 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, Tenn. Code Ann. Title 34;

(H) Cases under Tenn. Code Ann. § 37-10-304 and Tenn. Sup. Ct. R. 24, relative to petitions for waiver of parental consent for abortions by minors;

- (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;
- (J) Cases in which a juvenile is charged with juvenile delinquency for committing an act which would be a misdemeanor or a felony if committed by an adult;
- (K) Cases under Tenn. Code Ann. Titles 36 and 37 involving allegations against parents who have a right to counsel and whose parental rights could be in jeopardy from a finding that a child is dependent or neglected or in terminating parental rights;
- (L) Reports of abuse or neglect or investigation reports under Tenn. Code Ann. §§ 37-1-401 through 37-1-411 where appointment of a guardian ad litem is required.
- (M) Proceedings to terminate parental rights where appointment of a guardian ad litem is required;
- (N) Cases alleging unruly conduct of a child that place the child in jeopardy of being removed from the home pursuant to Tenn. Code Ann. § 37-1-132(b); and
- (O) Adoption proceedings in which the court appoints a guardian ad litem for the child or children pursuant to Tenn. Code Ann. § 36-1-146.

- (2) To establish qualifications, determine attorney fee amounts, and provide for compensation of appointed counsel in capital and non-capital cases; and where the Office of the Post-Conviction Defender is unable to render said representation in capital post-conviction proceedings.
- (3) To determine the reasonable amount for expenses and provide for payment of expenses incident to appointed counsel's representation.
- (4) To provide the final determination for any requests for funding investigators, experts and support services that exceed approved policies and not approved by the Executive Director.
- (5) To determine the rate of fees and policies governing the retention 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 other proceedings where indigent parties have the right to representation.
- (6) To establish policies and procedures for reviewing fee claims, contracts with private counsel, and reimbursement of expenses incident to representation of indigent parties.
- (7) To meet the standards set forth in 28 U.S.C. § 2261 (Section 107 of the Antiterrorism and Effective Death Penalty Act of 1996).

(b) Composition of Commission. (1) The Commission shall consist of nine members equally representing each of the grand divisions of Tennessee.

(c) (1) Term of Commission Members. The Commission members shall be appointed to three-year terms by the Supreme Court. No member who has served two successive three-year terms shall be eligible for reappointment to the Commission until three years after the conclusion of the most recent term.

(2) The initial members appointed to the Commission shall have staggered terms, thereafter all Commission members' terms shall be three years.

(3) Upon the resignation of a member of the Commission or after the expiration of a member's allowable term, the vacancy shall be filled by the Supreme Court.

(d) Structure of the Commission. (1) The Supreme Court shall designate one member as Chair of the Commission and another member as Vice-Chair. The Commission shall select a Secretary-Treasurer from among its members by a simple majority affirmative vote.

(2) The Commission may allocate responsibilities not requiring formal action, as it deems appropriate, on an informal basis.

(3) Five members of the Commission shall constitute a quorum. Unless otherwise permitted by this Rule, an affirmative vote of five members of the Commission shall be necessary to authorize any action. If time restraints are such that a regular or special meeting of the Commission is impractical, the Executive Director shall circulate to the members of the Commission in writing the reasons for the recommendation of a particular action supported by a factual report. Commission members may communicate their vote for or against the recommendation in writing by regular mail or any electronic means. Any member of the Commission may request that the Executive Director convene a telephone or virtual conference of the Commission, whereupon such conference must be convened with at least a quorum so conferring.

(e) No Compensation. Members of the Commission shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties in accordance with the schedule for judicial reimbursement promulgated by the Administrative Office of the Courts.

(f) Policy and Procedure of the Board. (1) The Commission shall have the power to adopt such statements of policy and procedure as it may deem necessary or expedient, not inconsistent with the rules of the Supreme Court. Upon adoption by the Commission, the Executive Director shall provide a copy of the policy or procedure to the Supreme Court for approval.

(2) All such finalized statements of policy and procedure shall be maintained by the Executive Director as the Commission's Statement of Policy and Procedure and shall be open to public inspection.

Section 2. The Office of the Appointed Counsel Commission and Duties of the Executive Director.

(a) The Supreme Court shall appoint an Executive Director, who shall serve at its pleasure. Following his or her appointment, the Executive Director shall report to the Commission, which upon request of the Court shall conduct performance evaluations of the Executive Director and report such evaluations to the Supreme Court. The Executive Director may engage such staff as may be necessary to conduct the business of the Commission within the scope of this Rule.

(b) The Executive Director shall establish the Office and shall be responsible for all administrative duties in the enforcement of this Rule including, but not limited to:

(1) Manage the budget, sign any necessary and approved contracts on behalf of the Office, and supervise all employees.

(2) In consultation and approval of the Commission, develop and enforce policies regarding requests for funding of investigators, experts and support services. Within limits and procedures determined by the Commission, review and determine any requests for exceptions to the policies.

(3) Employ and contract with attorneys, experts, and investigators.

(4) Provide oversight for the attorney appointment process through its various contractual arrangements.

(5) Develop training and education for attorneys and monitor and track key performance measures.

(6) Coordinate with the Administrative Office of the Courts for fiscal, information technology, and human resources support to carry out the purposes of the Office.

(7) As required, coordinate with judges, the District Public Defenders Conference, and other stakeholders to carry out the purposes of the Office.

Section 3. Salaries, Expenses and Accounting.

(a) **Salaries.** The Supreme Court shall fix the salary of the Executive Director. Salaries of other staff shall be determined by the Executive Director with approval of the Supreme Court.

(b) **Expenses.** The Executive Director shall approve all staff expenses, administrative costs, and the expenses of the members of the Commission.

(b) **Accounting.** The Administrative Office of the Courts shall perform accounting functions for the Commission and Office, either directly or through its oversight and final approval of transactions performed by Office personnel.

Section 4. Divisional Counsel.

(a) Selection of Divisional Counsel. The Executive Director, in consultation with the Commission, shall employ a minimum of one Divisional Counsel in each grand division of Tennessee who shall report to the Executive Director and be full-time employees of the Office.

(b) Qualifications of Divisional Counsel. Each person employed as Divisional Counsel must

(1) Be a licensed attorney with at least ten (10) years of full-time experience as a practicing attorney.

(2) The majority of their practice must be as a criminal defense attorney, public defender, guardian ad litem, or representing parents in child welfare cases.

(3) Must demonstrate requisite first chair trial experience and completion of significant Continuing Legal Education in criminal law or child welfare cases.

(c) Duties of Divisional Counsel.

(1) Each Divisional Counsel will maintain a caseload in the grand division in which they are appointed.

(2) Coordinate and communicate with judges, judicial staff and court clerks regarding dockets, cases, and contracted counsel.

(3) Assign or supervise/approve assignment of counsel contracted with the Office in the grand division when a court appoints the Office in a case or proceeding.

(4) Communicate and provide mentorship and support to contracted counsel.

(6) Provide initial approval of investigators, experts, and support services within the policies set out by the Commission.

(7) Supervise support staff and provide general office administration for the Office in their grand division.

(8) Serve as the first level response to concerns or questions of parties who are represented by counsel provided by the Office.

Section 5. Appointment of Counsel.

(a)(1) Except in cases under Sections 1(a)(1)(F) proceedings under the mental health law, 1(a)(1)(G) proceedings for guardianship under Tenn. Code Ann. Title 34, and 1(a)(1)(J) juvenile delinquency proceedings, whenever a party to any case or proceeding in section 1(a) requests the appointment of counsel, the party shall be required to complete and submit to the court an Affidavit of Indigency Form provided by the Office.

(2) Upon inquiry, the court shall make a finding as to the indigency of the party, including whether the party has the financial ability to defray a portion or all of the costs of representation pursuant to the provisions of Tenn. Code Ann. § 40-14-202, which finding shall be evidenced by a court order.

(3) Upon finding a party indigent, the court shall enter an order appointing counsel. If the indigent party rejects the offer of appointment of counsel with an understanding of the legal consequences of the rejection, the court shall enter an order stating the indigent party refused representation.

(b) In every criminal case and proceeding listed in Sec. 1(a)(1), the court shall appoint the district public defender's office or the state post-conviction defender's office if no conflict of interest exists, unless in the sound discretion of the trial judge appointment of other counsel is necessary. Appointment of public defenders shall be subject to the limitations of Tenn. Code Ann. §§ 8-14-201 et. seq.

(c) If a conflict of interest exists as provided in Tennessee Rules of Professional Conduct 1.7 or the public defender is not qualified in capital cases pursuant to this rule, and the Office is established in the judicial district, the court shall designate the Office by order to provide a qualified attorney to represent the indigent party. In any judicial districts where the Office is not established, the court shall appoint private counsel pursuant to Tenn. Sup. Ct. R. 13, Sec. 1(e).

(d) In all other cases listed in Sec. 1(a)(1) where appointed counsel is required, the court shall designate the Office by order to provide counsel where the Office is established in that judicial district. In any judicial districts where the Office is not established, the court shall appoint private counsel pursuant to Tenn. Sup. Ct. R. 13, Sec. 1(e).

(e) Where the court finds that separate counsel is required for indigent parties who have interests that cannot be properly represented by one attorney, it shall designate the Office to provide an attorney for each defendant.

(f) When the court designates the Office to provide representation, the order of designation shall assess the non-refundable administrative fee provided by Tenn. Code Ann. § 37-1-126(c)(1) or § 40-14-103(b)(1). Additionally, the court shall consider the financial ability of the indigent party to defray a portion or all of the cost for representation by the public defender or a portion or all of the costs associated with the provision of counsel as provided by the Office. Tenn. Code Ann. §§ 8-14-105(d)(1); 37-1-126(c)(2); or 40-14-103(b)(2). If the court finds the indigent party is financially able to defray a portion or all the cost of the indigent party's representation, the court shall enter an order directing the indigent party to pay into the registry of the clerk of such court such sum as the court determines the indigent party is able to pay as specified by Tenn. Code Ann. § 40-14-202(e).

(g) Upon the appointment of the Office to provide representation, an attorney employed or

contracted with the Office will file a notice of appearance. Counsel provided by the Office shall continue to represent an indigent party throughout the proceedings, including any appeals, until the case has been concluded, the Office requires counsel to withdraw and provides substitute counsel, or the party is no longer determined to be indigent. Where the Office provides counsel and the court finds that (1) a breakdown in the attorney-client relationship exists and (2) that substitution of counsel is required, the court will notify the Office, which will provide new counsel. A Notice of Substitution of Counsel will be filed by the Office.

(h)(1) Indigent parties shall not have the right to select appointed counsel. If an indigent party refuses to accept the services of appointed counsel, such refusal shall be in writing and shall be signed by the indigent party in the presence of the court.

(2) The court shall acknowledge thereon the signature of the indigent party and make the written refusal a part of the record in the case. In addition, the court shall satisfy all other applicable constitutional and procedural requirements relating to waiver of the right to counsel. The indigent party may act pro se without the assistance or presence of counsel only after the court has fulfilled all lawful obligations relating to waiver of the right to counsel.

(3) If the court finds that counsel should be appointed in an advisory role for a pro se indigent party, the court shall appoint the District Public Defender or the Office in the event the District Public Defender has a conflict.

Section 6. Minimum Qualifications and Compensation of Counsel in Capital Cases.

(a) For purposes of this rule, a capital case is a case in which a notice of intent to seek the death penalty, as provided in Tenn. R. Crim. P. 12.3(b) and Tenn. Code Ann. § 39-13-208, has been filed and no order withdrawing the notice has been filed.

(b) When designated by the court, the Office shall provide two attorneys to represent a defendant at trial in a capital case. Both attorneys appointed must be licensed in Tennessee and have significant experience in Tennessee criminal trial practice. The Notices of Appearance filed by the attorneys provided by the Office shall specify which attorney is “lead counsel” and which attorney is “co-counsel.” Whenever possible, a public defender shall serve as and be designated “lead counsel.”

(c) Lead counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice pro hac vice;

(2) have regularly participated in criminal jury trials for at least five (5) years;

(3) have completed, prior to the appointment, a minimum of six (6) hours of specialized training

in the defense of defendants charged with a capital offense and complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two years thereafter;

(4) have at least one (1) of the following qualifications:

(A) experience as lead counsel in the jury trial of at least one (1) capital case;

(B) experience as co-counsel in the trial of at least two (2) capital cases;

(C) experience as co-counsel in the trial of a capital case and experience as lead or sole counsel in the jury trial of at least one (1) murder case;

(D) experience as lead counsel or sole counsel in at least three (3) murder jury trials or one (1) murder jury trial and three (3) felony jury trials; or

(E) experience as a judge in the jury trial of at least one (1) capital case.

(d) Co-counsel must:

(1) be a member in good standing of the Tennessee bar or be admitted to practice pro hac vice;

(2) have completed, prior to the appointment, a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense and complete a minimum of six (6) hours of specialized training in the defense of defendants charged with a capital offense every two (2) years thereafter;

(3) have at least one (1) of the following qualifications:

(A) qualify as lead counsel under (c) within this section; or

(B) have experience as sole counsel, lead counsel, or co-counsel in a murder jury trial.

(e) Appointed counsel on direct appeal, regardless of any prior representation of the defendant, must have three (3) years of litigation experience in criminal trials and direct appeals, and they must meet one of the following requirements: (1) experience as counsel of record in the direct appeal of a capital case or (2) experience as counsel of record in the direct appeal of at least three felony convictions within the past three (3) years and a minimum of six (6) hours of specialized training in the trial and direct appeal of capital cases.

(f) Counsel eligible to be appointed as post-conviction counsel in capital cases must have the same qualifications as appointed appellate counsel or have trial and appellate experience as counsel of record in state post-conviction proceedings in three (3) felony cases, two (2) murder cases, or one (1) capital case. Counsel also must have a working knowledge of federal habeas corpus practice, which may be satisfied by six (6) hours of specialized training in the representation in federal courts of defendants under the sentence of death imposed in state courts; and they must not have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made, unless the defendant and counsel expressly consent to continued representation.

(g) The Commission shall set the compensation rate for all counsel provided by the Office for capital cases and ensure that attorneys assigned to capital cases meet the qualifications in this section.

**BY SIGNING THIS AFFIDAVIT, YOU AUTHORIZE THE OFFICE OF THE APPOINTED COUNSEL COMMISSION TO
OBTAIN CREDIT, EMPLOYMENT, AND PROPERTY REPORTS TO VERIFY YOUR RESPONSES.**

ALL OF THE INFORMATION REQUESTED ON THIS FORM, INCLUDING THE CONFIDENTIAL EXHIBIT, MUST BE COMPLETED FOR THE JUDGE TO DETERMINE INDIGENCY.

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

PART I

1. Full Name: _____
2. Are you working anywhere? Yes () No () Where _____
3. How much money do you make? _____ (weekly, monthly, etc.)
4. Do you receive any governmental assistance or pensions (disability, SSI, AFDC, etc.)? Yes () No ()
What is its value? _____ (weekly, monthly, etc.)
5. Do you own any property (house, car, bank acct., etc.): Yes () No ()
What is its value? _____
6. Are you, or your family going to be able to post your bond? Yes () No ()
7. Are you, or your family going to hire a private attorney? Yes () No ()

Are you now in custody? Yes () No ()
If so, how long have you been in custody? _____
(If the defendant is in custody, unable to make bond and the answers to questions one (1) through eleven (11) make it clear that the defendant has no resources to hire a private attorney, skip Part II and complete Part III. If Part II is to be completed, do not list items already listed in Part I.)

PART II

9. I have met with following lawyer(s), have attempted to hire said lawyer(s) to represent me, and have been unable to do so:
Name _____
Address _____

10. All my income from all sources (including, but not limited to wages, interest, gifts, AFDC, SSI, social security, retirement, disability pension, unemployment alimony, worker's compensation, etc.):

\$ _____ per _____ from _____
\$ _____ per _____ from _____
\$ _____ per _____ from _____

11. All money available to me from any source:

A. Cash _____
B. Checking, Saving, or CD Account balance _____
C. Debts owed me _____
D. Credit Card(s)- balance (Visa, Mastercard, American Express, etc.) _____
E. Other _____

Court
 County
 Tennessee

UNIFORM AFFIDAVIT OF INDIGENCE

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VS.

For more information, contact the Office of the Vice President for Research and Economic Development at 515-294-6450 or research@iastate.edu.

12. All vehicles/vessels owned by me, solely or jointly, within the last six months (including but not limited to cars, trucks, motorcycles, farm equip., boats etc.):

_____ value \$ _____ amt. owed _____

13. All real estate owned by me, solely or jointly, within the last six months (including land, lots, houses, mobile homes, etc.):

value \$ _____ amt. owed _____

14. All assets or property not already listed owned within the last six months or expected in the future:

_____ value \$ _____ amt. owed _____

15. The last income tax return I filed was for the year _____ and it reflected a net income of \$ _____. I will file a copy of same within one week if required.

16. I am out of jail on bond of \$ _____ made by _____. The money to make bond, \$ _____ was paid by _____.

PART III

17. Acknowledging that I am still under oath, I certify that I have listed in Parts I and II all assets in which I hold or expect to hold any legal or equitable interest.

18. I am financially unable to obtain the assistance of a lawyer and request the court to appoint a lawyer for me.

19. I understand that it is a **Class A misdemeanor** for which I can be sentenced to jail for up to 11 months 29 days or be fined up to \$2500.00 or both if I intentionally or knowingly misrepresent, falsify, or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request for an attorney.

20. I EXPRESSLY AUTHORIZE THE OFFICE OF THE APPOINTED COUNSEL COMMISSION TO OBTAIN REPORTS ON MY CONSUMER CREDIT, EMPLOYMENT OR PROPERTY OWNERSHIP TO VERIFY THE STATEMENTS MADE IN THIS AFFIDAVIT AS PERMITTED BY 15 U.S. CODE §1681B(A)(2) AND (3)(B). BY MY SIGNATURE BELOW, I HEREBY AUTHORIZE ALL CORPORATIONS, FORMER EMPLOYERS, CREDIT AGENCIES, EDUCATIONAL INSTITUTIONS, CITY, STATE, COUNTY AND FEDERAL COURTS AND AGENCIES, MILITARY SERVICES TO RELEASE ALL INFORMATION THEY MAY HAVE ABOUT MY FINANCIAL STATUS, EMPLOYMENT HISTORY OR PROPERTY OWNERSHIP.

This _____ day of _____, _____.

Defendant

Sworn to and Subscribed before me this ____ day of _____, _____.

[Signature]

Court Clerk

Judge

Court
County
Tennessee

**UNIFORM AFFIDAVIT OF
INDIGENCE**

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CONFIDENTIAL EXHIBIT

The information requested on this Exhibit is not subject to public inspection. Pursuant to Tenn. Code Ann. § 10-7-503, the custodian of this record must seal this Exhibit and prohibit public inspection, unless disclosure is ordered by a court of competent jurisdiction.

21. Social Security No.: _____

22. Birth date: _____

23. Any other names ever used: _____

24. Address: _____

25. Telephone Nos.: (Home) _____ (Work) _____ (Other) _____

26. Names & ages of all dependents:

Age: _____	relationship _____

27. Checking, Saving, or CD Account(s)- numbers with, balance

28. Credit Card(s)-account numbers with balance, credit limit, and type (Visa, Mastercard, American Express, etc.)

I EXPRESSLY AUTHORIZE THE OFFICE OF THE APPOINTED COUNSEL COMMISSION TO OBTAIN REPORTS ON MY CONSUMER CREDIT, EMPLOYMENT OR PROPERTY OWNERSHIP TO VERIFY THE STATEMENTS MADE IN THIS AFFIDAVIT AS PERMITTED BY 15 U.S. CODE §1681B(A)(2) AND (3)(B). BY MY SIGNATURE BELOW, I HEREBY AUTHORIZE ALL CORPORATIONS, FORMER EMPLOYERS, CREDIT AGENCIES, EDUCATIONAL INSTITUTIONS, CITY, STATE, COUNTY AND FEDERAL COURTS AND AGENCIES, MILITARY SERVICES TO RELEASE ALL INFORMATION THEY MAY HAVE ABOUT MY FINANCIAL STATUS, EMPLOYMENT HISTORY OR PROPERTY OWNERSHIP.

This _____ day of _____, _____.

Defendant