



Rules of
Department of Social Services
Division 40—Family Support Division
Chapter 30—Permanency Planning for Children

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**Title 13—DEPARTMENT OF
SOCIAL SERVICES**

**Division 40—Family Support Division
Chapter 30—Permanency Planning for
Children**

13 CSR 40-30.010 Case Plan

(Moved to 13 CSR 35-35.050)

13 CSR 40-30.020 Attorney Fees in Termination of Parental Rights Cases

PURPOSE: The purpose of this rule is to establish fees for attorneys and guardians ad litem who provide services in termination of parental rights cases.

(1) If permanency for the children requires parental rights be terminated to enable children to be permanently placed or adopted, the children's parents shall be provided representation in such cases which shall include counsel, investigative, expert and other services to ensure adequate representation. This includes the appointment of a guardian *ad litem* for the children. Representation shall be provided for financially eligible persons. A person is considered financially eligible when it appears from all of the circumstances of the case including the person's income, the number of individuals dependent on the person for support, and the person's financial assets and liabilities, that the person does not have the means available to obtain counsel and is indigent. Upon motion and/or application by any party, the court in which the case is pending shall have the authority to determine, based on a finding of indigency, whether the Division of Family Services should pay for counsel for a particular parent. The motion and/or application for and determination of indigency may be made at any time by the court. If the court finds the parent is not indigent, the Division of Family Services shall discontinue paying for counsel on behalf of such parent. Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association or other organization of attorneys willing to furnish representation of parents in termination of parental rights cases. A person for whom counsel is appointed shall be represented at every stage of the termination of parental rights proceeding, from his or her initial appearance after the filing of the termination of parental rights petition is filed through appeal, including ancillary matters appropriate to the proceedings. In the interest of justice, one counsel may be substituted for another at any stage of the proceedings.

(2) After the filing of a termination of parental rights petition pursuant to Chapter 211, RSMo, or if a combined termination of parental rights and transfer of custody and/or adoption petition was filed, as permitted by Chapter 453, RSMo, then after the initiation of the termination of parental rights phase of that case payment for attorney representation shall be made as provided below:

(A) Hourly Rate. Any attorney shall, at the conclusion of the representation (i.e., the conclusion of trial or at the conclusion of any appeal, or both at the conclusion of trial and at the conclusion of appeal), be compensated at a rate not exceeding one hundred dollars (\$100) per hour. Attorneys may be reimbursed, at the conclusion of the representation (i.e., the conclusion of trial or at the conclusion of any appeal, or both at the conclusion of trial and at the conclusion of appeal), for expenses reasonably incurred, including the costs of transcripts authorized by the court except that if a termination of parental rights petition was filed in a separate proceeding and a duplicative termination of parental rights petition or the transfer of custody and/or adoption petition or the combined termination of parental rights and transfer of custody and/or adoption petition was filed prior to the court's ordering of termination of parental rights in that separate proceeding, reimbursement for attorneys fees and/or expenses will not be reimbursed if those fees and/or expenses are duplicative of fees and/or expenses reimbursed in the separate termination of parental rights proceeding;

(B) Maximum Amounts. The compensation to be paid for representation at trial shall not exceed one thousand dollars (\$1,000) for uncontested matters and seven thousand dollars (\$7,000) for contested matters. For representation in an appellate court, the compensation shall not exceed three thousand five hundred dollars (\$3,500) at one hundred dollars (\$100) per hour;

(C) Cost of Extraordinary Expenses. The cost of extraordinary expenses must be approved in advance by the court but shall be reimbursed at the conclusion of the representation (i.e., the conclusion of trial or at the conclusion of any appeal, or both at the conclusion of trial and at the conclusion of appeal). Such extraordinary expenses include:

1. Psychiatric/psychological/medical evaluations;
2. Expert witnesses; and
3. Deposition of witnesses;

(D) Waiving Maximum Amounts. Payment in excess of any maximum amount provided

in subsection (2)(B) may be made for extended or complex representation whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the court. At any time an attorney believes that the cost of representation will surpass the limits provided for in subsection (2)(B), they must provide notice to the Division of Family Services, that they may exceed the current maximum fee;

(E) Disclosure of Fees. The amounts paid to particular attorneys or groups of attorneys shall be available as public records. However, the identity of parties, including parents, children, foster parents and anyone whose confidentiality is established in Chapter 210 or 211, RSMo, shall not be publicly available;

(F) Filing Claims. A separate claim for compensation and reimbursement shall be made to the Division of Family Services for each case. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The Division of Family Services may agree to the claim, may negotiate the claim with the applying attorney, or may deny the claim in which case the attorney shall apply to the court to determine the compensation and reimbursement to be paid to the attorney;

(G) New Trials. For purposes of compensation and other payments authorized by this section, an order by a trial or appellate court granting a new trial shall be deemed to initiate a new case;

(H) Receipt of Other Payments. Whenever the Division of Family Services or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney.

AUTHORITY: section 207.020, RSMo 2000. Emergency rule filed Feb. 14, 2002, effective Feb. 24, 2002, expired Aug. 22, 2002. Original rule filed Feb. 14, 2002, effective July 30, 2002. Emergency amendment filed Dec. 4, 2002, effective Dec. 14, 2002, expired June 11, 2003. Amended: Filed Dec. 4, 2002, effective June 30, 2003.*

**Original authority: 207.020, RSMo 1945, amended 1961, 1965, 1977, 1981, 1982, 1986, 1993.*



**13 CSR 40-30.030 Attorney Fees and
Guardian *Ad Litem* Fees in Subsidized
Adoption and Guardianship Cases**

*Emergency rule filed June 13, 2002, effective
June 24, 2002, expired Dec. 20, 2002.*