

**RULES  
OF  
TENNESSEE PRIVATE PROBATION SERVICES COUNCIL**

**CHAPTER 1177-02  
RULES OF PROFESSIONAL CONDUCT**

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**1177-02-.01 DUTIES AND DOCUMENTATION.**

- (1) Any private entity providing probation supervisory services shall:
- (a) Supervise all misdemeanor defendants sentenced by a proper order of probation to be supervised by the private entity and to assist the defendants so sentenced in completing all court ordered conditions of probation;
  - (b) Maintain documentation on all misdemeanor defendants sentenced to be supervised by the private entity. All books, records and documentation maintained by the private entity relating to work performed or money received for supervision of misdemeanor defendants so sentenced shall be maintained for a period of three (3) full years from the date of final payment or audit. Such records shall be subject to audit, both fiscal and performance, at any reasonable time and upon reasonable notice by the Council, or by the courts or the duly appointed representatives of the courts in which the private entity operates. The records shall be maintained in accordance with generally accepted accounting principles;
  - (c) Perform any additional duties that the judges of the courts for which the private entity provides misdemeanor probation supervisory services may by local rule or court order require;
  - (d) Maintain and have available for the Council, court, or probationer to view the following:
    - 1. Schedule of fees, including a policy for indigent offenders; and
    - 2. Proof of insurance and performance bond required under 1177-2-.02; and
  - (e) Assume responsibility for the actions of all employees, agents, and owners acting within the scope of their employment with the private entity.

**Authority:** T.C.A. §§ 16-3-909, 40-35-302(g), and 40-35-302(g)(1)(A). **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005. Amendments filed August 12, 2016; effective November 10, 2016.

**1177-02-.02 LIABILITY INSURANCE AND PERFORMANCE BOND.**

- (1) Any private entity providing probation supervisory services shall post each of the following:
- (a) A liability insurance policy in an amount at least equal to the limits of governmental tort liability established in the Governmental Tort Liability Act, codified as T.C.A., Title 29, Chapter 20, that is in effect on the date the services are provided. Nothing in this rule

(Rule 1177-02-.02, continued)

shall be construed as prohibiting such entity from carrying a liability insurance policy in excess of the limits of liability provided in the Government Tort Liability Act. Such policy shall be for the purpose of reimbursing an injured or aggrieved party for any damages or expenses for which the entity providing probation supervisory services is found liable by a court of competent jurisdiction;

- (b) A performance bond issued by a corporate surety in the amount of twenty-five thousand dollars (\$25,000). Such bond shall be to provide recourse to the government entity for which the private entity is providing probation supervisory services in the event of nonperformance, default, bankruptcy or failure of the entity to perform the required services; all private entities providing misdemeanor probation supervisory services in this state will use the uniform performance bond designed by the comptroller of the treasury of Tennessee;
- (c) A copy of the liability insurance policy and the performance bond shall be filed with the clerk of all courts in each county in which the entity proposes to provide such probation supervisory services.

**Authority:** T.C.A. §§ 16-3-909 and 40-35-302(g)(1)(C). **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005.

#### **1177-02-.03 UNIFORM CONTRACT STANDARDS.**

- (1) The terms of any contract between a contracting authority of this state and a private probation entity to provide probation services shall state at a minimum:
  - (a) extent of the services to be rendered by the private entity providing the probation services;
  - (b) Any requirements for staff qualifications, to include those required by statute and rules, as well as any surpassing those required by statute and rules;
  - (c) Requirements for criminal record checks of staff in accordance with the requirements of statute and rules;
  - (d) Policies and procedures for training of staff;
  - (e) Bonding of staff and liability insurance coverage;
  - (f) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;
  - (g) Procedures for handling the collection of all court ordered fines, fees, and restitution, and for handling court ordered community service and treatment;
  - (h) Procedures for handling indigent offenders to ensure placement of such offenders despite their inability to pay;
  - (i) Circumstances under which revocation of an offender's probation may be recommended;
  - (j) Reporting and record keeping requirements; and
  - (k) Default and contract termination procedures.

(Rule 1177-02-.03, continued)

**Authority:** T.C.A. § 16-3-909. **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005.

**1177-02-.04 CONFLICT OF INTEREST – CODE OF PROFESSIONAL CONDUCT.**

- (1) No private entity that provides probation services, or employee, owner, or agent of the entity, may give or offer to give anything of value to a governmental employee or the employee's immediate family.
- (2) No private entity that provides probation services, or employee, owner, or agent of the entity, may loan money to or have any other personal business dealings with probationers under the entity's supervision.
- (3) No private entity that provides probation services may permit any person to supervise a probationer who is a member of such supervisor's immediate family. For purposes of this rule, "immediate family" shall mean mother, father, sibling, adult children, or maternal and paternal grandparents.
- (4) No private entity that provides probations services, or employee owner or agent of the entity, may exchange a gift, gratuity, or favor with a probationer, a probationer's family, or any person who offers the gift, gratuity, or favor with the intent of influencing the supervision of a probationer.
- (5) The provisions of this rule shall not be construed to amend or abridge any contract or operating agreement between any court or county government and any agency or individual presently supplying such services to such court or county government pursuant to T.C.A. § 40-35-101 et. seq.
- (6) No private entity that provides probation services, or employee, owner, or agent of the entity, may charge any fees not in the private entity's fee schedule unless ordered by a court or otherwise required by law.
- (7) No employee, owner, or agent of a private entity that provides probation services may engage in a romantic or sexual relationship or have any sexual contact with a probationer. No employee, owner, or agent of the private entity may use his or her supervisory position or influence to encourage, threaten, or force a probationer to engage in sexual activity.
- (8) All employees, owners, or agents of the private entity that provides probation services must treat all members of the court and the probationers under its supervision in a manner consistent with the Code of Professional Conduct set forth herein. Examples of unprofessional treatment include, but are not limited to:
  - (a) Engaging in abusive, aggressive, hostile, or disrespectful conduct towards probationers or members of the court;
  - (b) Engaging in fraudulent or misleading behavior;
  - (c) Giving any false impression of arrest authority through the use of one's title or position with the private entity;
  - (d) Collecting any money from probationers in excess of the private entity's fee schedule unless ordered by a court or otherwise required by law; and
  - (e) Engaging in harassment or discrimination based on race, national origin, gender, age, sexual orientation, or ability to pay.

(Rule 1177-02-.04, continued)

**Authority:** T.C.A. §§ 16-3-902, 16-3-909, 40-35-302(g), and 40-35-302(g)(1)(H) and (I). **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005. Amendments filed August 12, 2016; effective November 10, 2016.

#### 1177-02-.05 CONTINUED CLEAR CRIMINAL RECORD.

- (1) Each owner, director, agent, employee or volunteer who supervises probationers shall be required to maintain a criminal record free of any felony conviction or plea of guilty or nolo contendere, or any conviction or plea of guilty or nolo contendere for misdemeanors involving moral turpitude subject to paragraph (3).
- (2) Any conviction of or plea of guilty or nolo contendere to such offense by a current owner, director, agent, employee or volunteer who supervises probationers must be reported to the Council within five (5) business days.
- (3) No private entity may permit a person having such conviction or entering such plea to supervise probationers without the prior written approval of the Council.
- (4) The private entity and potential or current employee may each submit a written statement, explaining why said person should be permitted to supervise probationers, to assist the Council in its decision.

**Authority:** T.C.A. § 16-3-909. **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005.

#### 1177-02-.06 REFUSAL TO RENEW, DENIAL, SUSPENSION, AND REVOCATION OF APPROVAL.

- (1) The Council may, in a lawful proceeding under the Uniform Administrative Procedures Act codified as T.C.A., Title 4, Chapter 5, deny, suspend, revoke, or refuse to renew the registration and approval of any entity that provides misdemeanor probation services in this state for any of the following:
  - (a) Knowingly or recklessly making any verbal or written false or misleading statement of material fact, or omitting a material fact in connection with a registration application or in connection with an inspection or investigation of the entity;
  - (b) Failure or refusal to provide Council representatives with meaningful access to the private entity's premises, staff, offender records and documents reasonably necessary to making a compliance determination;
  - (c) Changing ownership of a private probation entity in order to avoid or avert the denial, revocation or suspension of registration;
  - (d) Altering or falsifying any private probation entity records;
  - (e) Failure or refusal by a private probation entity to remit required reports as outlined in these rules;
  - (f) Failure or refusal to comply with any of these rules or with any law relating to the operation of a private probation entity;
  - (g) Failure or refusal to comply with any order or directive issued by the Council pursuant to its authority as provided by law and rules;
  - (h) Failure or refusal to pay any fees required under these rules;

(Rule 1177-02-.06, continued)

- (i) Failure or refusal to follow its posted fee schedule;
- (j) Failure to follow the Council's rules on conflict of interest or code of conduct; or
- (k) Failure to properly supervise a probationer as set forth in the probation agreement. Examples of a failure to properly supervise include, but are not limited to:
  - 1. Not meeting with the probationer as required in the probation agreement;
  - 2. Not conducting drug tests as required in the probation agreement, if applicable; or
  - 3. Not monitoring the probationer's attendance of required, if any, counseling classes.

**Authority:** T.C.A. §§ 16-3-902, 16-3-909, 16-3-910, and 40-35-302(g). **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005. Amendments filed August 12, 2016; effective November 10, 2016.

#### 1177-02-.07 CIVIL PENALTIES.

- (1) The Council may, in a lawful proceeding under the Uniform Administrative Procedures Act codified as T.C.A., Title 4, Chapter 5, assess civil penalties, not to exceed one thousand dollars (\$1,000.00) per violation, for violations of statutes, rules or orders enforceable by the Council. Each day of continued violation may constitute a separate violation. In determining the amount of the penalty assessed pursuant to this rule, the Council may consider such factors as the following:
  - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (b) The circumstances leading to the violation;
  - (c) The severity of the violation and the risk of harm to the public;
  - (d) The economic benefits gained by the violator as a result of non-compliance; and
  - (e) The best interest of the public.
- (2) Civil penalties will be categorized as follows:
  - (a) Category I. (\$700-\$1,000) Violations involving fraud, providing false information or documents, and failure to account or produce official court documents and reports. Violations involving unregistered practice.
  - (b) Category II. (\$300-\$699) Violations involving noncompliance with private entity registration requirements such as failure to submit required periodic reports and documents; violations involving Codes of Professional Conduct set forth in 1177-02-.04.
  - (c) Category III. (\$100-\$299) Violations involving private probation entity operations such as failure to maintain required records and documentation.

**Authority:** T.C.A. §§ 16-3-909, 16-3-910, and 56-1-308. **Administrative History:** Original rule filed June 23, 2005; effective September 6, 2005. Amendments filed August 12, 2016; effective November 10, 2016.