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Sequence Number: 01-16-16
 Notice ID(s): 2443-2444
 File Date: 1/15/16

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Private Probation Services Council |
| Division: | Department of Commerce & Insurance, Regulatory Boards Division |
| Contact Person: | Ellery Richardson, Assistant General Counsel |
| Address: | Davy Crockett Tower 500 James Robertson Parkway, 5 th Floor Nashville, TN 37243 |
| Phone: | (615) 741-3072 |
| Email: | Ellery.Richardson@gmail.com |

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

| | |
|---------------------|---|
| ADA Contact: | Don Coleman |
| Address: | Department of Commerce and Insurance 500 James Robertson Parkway Nashville, Tennessee 37243 |
| Phone: | (615) 741-0481 |
| Email: | Don.Coleman@tn.gov |

Hearing Location(s) (for additional locations, copy and paste table)

| | | | |
|----------------|--|---|----------------------------------|
| Address 1: | Conference Room 1-B Davy Crockett Tower 500 James Robertson Parkway, 1 st Floor | | |
| Address 2: | | | |
| City: | Nashville, TN | | |
| Zip: | 37243 | | |
| Hearing Date : | 03/11/2016 | | |
| Hearing Time: | 10:00 AM | <input checked="" type="checkbox"/> CST/CDT | <input type="checkbox"/> EST/EDT |

Additional Hearing Information:

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| |
|--|

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|-----------------------|---|
| 1177-01 | Application, Registration, and Fee Requirements |
| Rule Number | Rule Title |
| 1177-01-.08 | Quarterly Provider Fee |

| Chapter Number | Chapter Title |
|-----------------------|--|
| 1177-02 | Rules of Professional Conduct |
| Rule Number | Rule Title |
| 1177-02-.01 | Duties and Documentation |
| 1177-02-.04 | Conflict of Interest – Code of Professional Conduct |
| 1177-02-.06 | Refusal to Renew, Denial, Suspension, and Revocation of Approval |
| 1177-02-.07 | Civil Penalties |

Chapter 1177-01
Application, Registration, and Fee Requirements

Amendments

Rule 1177-01-.08(1) Quarterly Provider Fee is amended by deleting the phrase "one dollar (\$1.00)" in Paragraph (1) and substituting instead the phrase "seventy-five cents (\$0.75)" so that, as amended, the Paragraph shall read:

- (1) Each private entity shall pay a quarterly provider fee to the Council in the amount of seventy-five cents (\$0.75) per quarter for every person reported on the case load of the entity in the quarterly report required under T.C.A. § 40-35-302(g)(1)(A)(i) and rule 0780-01-11-.05.

Authority: T.C.A. §§ 16-3-909 and 16-3-910.

Chapter 1177-2
Rules of Professional Conduct

Amendments

The Table of Contents is amended by changing the title of rule 1177-2-.04 and adding a comma in 1177-2-.06 so that the amended Table of Contents shall read as follows:

| | | | |
|-------------|---|-------------|--|
| 1177-02-.01 | Duties and Documentation | 1177-02-.05 | Continued Clear Criminal Record |
| 1177-02-.02 | Liability Insurance and Performance Bond | 1177-02-.06 | Refusal to Renew, Denial, Suspension, and Revocation of Approval |
| 1177-02-.03 | Uniform Contract Standards | | |
| 1177-02-.04 | Conflict of Interest – Code of Professional Conduct | 1177-02-.07 | Civil Penalties |

Rule 1177-02-.01 Duties and Documentation is amended by adding subparagraphs (1)(d) and (1)(e) so that, as amended, the rule shall read as follows:

- (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) Understand that it is responsible 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 and 40-35-302(g).

Rule 1177-02-.04 Conflict of Interest – Code of Professional Conduct is amended by deleting the Rule and substituting the following:

- (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 probation services, or employee, owner, or agent of the entity, may accept or give a gift, gratuity, or favor from 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 employees, owners, or agents 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 employees, owners, or agents 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 must treat all members of the court and the probationers assigned to it in a professional manner. Unprofessional treatment includes, but is 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 his or her 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.

Authority: T.C.A. §§ 16-3-902, 16-3-909, and 40-35-302(g).

Rule 1177-02-.06 Refusal to Renew, Denial, Suspension, and Revocation of Approval is amended by deleting the Rule and substituting the following:

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

Authority: T.C.A. §§ 16-3-902, 16-3-909, and 40-35-302(g)

Rule 1177-02-.07 Civil Penalties is amended by adding language in paragraph (2) subparagraph (b) so that, as amended, the paragraph shall read as follows:

- (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 conflict of interest and unprofessional conduct.

- (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.

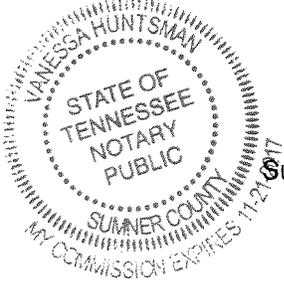
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1/14/16

Signature: Elley Richardson

Name of Officer: Elley Richardson

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: Jan. 14, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

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Filed with the Department of State on: 1/15/16

Tre Hargett

Tre Hargett
Secretary of State

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