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Sequence Number: 08-10-16
 Rule ID(s): 6273-6274
 File Date: 8/12/16
 Effective Date: 11/10/16

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Private Probation Services Council
Division:	Department of Commerce and Insurance
Contact Person:	Allison Ratton, Assistant General Counsel
Address:	500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-3072
Email:	Allison.ratton@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. 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) 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 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 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.

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 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)

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 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.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Judge Chris Craft	X				
Judge Klyne Lauderback	X				
Judge John Hudson	X				
Judge Hugh Harvey	X				
Stancil Ford	X				
Lynda Byford	X				
Veronica Thornton	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Private Probation Service Council on 03/11/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/16/2016

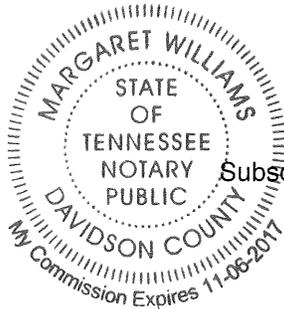
Rulemaking Hearing(s) Conducted on: (add more dates). 03/11/2016

Date: 7/13/16

Signature: Allison Ratton

Name of Officer: Allison Ratton

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: 7/13/16

Notary Public Signature: Margaret Williams

My commission expires on: 11/6/17

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slattery III
Herbert H. Slattery III
Attorney General and Reporter

8/4/2016
Date

Department of State Use Only

Filed with the Department of State on: 8/12/16

Effective on:

11/10/16



Tre Hargett
Secretary of State

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2016 AUG 12 PM 2:00
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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Craig Turner, General Manager for Correctional Services Incorporated dba Tennessee Correctional Services provided a written comment requesting that the Council amend its proposed amendment of Rule 1177-2-.03(g) to prohibit any licensee from accepting payments for court costs or fines from persons placed on supervised probation or diversion by a court in the State of Tennessee.

Response: The council members do not believe this proposed rule change is an issue to be addressed at this time, but suggest that it may be taken up later. Members commented that a private probation company may be required to monitor court cost being paid as a term of the probationary order. However, this may be an issue that should be addressed by the Tennessee legislature in the future.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

This rule would impact all licensees of the Council regarding the fee reduction and also standards of practice.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

These new rules require a licensee to maintain a schedule of fees and establish a policy for indigent offenders along with proof of insurance. Such requirements reflect only a minimal part of the licensee's current business operation and do not create any additional reporting requirements. Accordingly, these requirements are not expected to create any additional training or hiring of persons with professional skills.

3. A statement of the probable effect on impacted small businesses and consumers;

The probable impact on small businesses is minor because the proposed rules do not create any additional requirements to the licensees' current operations. Likewise the general public will be marginally impacted, as this area of regulation only affects persons on probation. For probationers, however, the likely impact will be significant, especially in terms of transparency of fees and policy regarding indigent persons.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

Overall, the proposed rules reduce the burden on the licensees by decreasing the quarterly provider fee from \$1.00 to \$0.75. Although compliance with the record keeping requirements and the Code of Conduct is minimally burdensome, the burden is offset by the reduction in fees.

5. A comparison of the proposed rule with any federal or state counterparts:

There is no known state or federal counterpart to such rules regarding private probation services.

6. Analysis of the effect of the possible exemption of small businesses from all or any party of the requirements contained in the proposed rule:

Exemption of small businesses would prevent most licensees from enjoying the reduced quarterly provider fee of \$0.75. Exemption from the record keeping requirements would subject probationers to potential deceptive practices and hinder further investigations of violations of standards of conduct by the Council.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules are not estimated to have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules lower the quarterly provider fee that registrants must pay to the Council from one dollar (\$1.00) per probationer to seventy-five cents (\$0.75). These rules also add a code of professional conduct and clarify that registrants are required to keep and post certain items they are already required to have, such as insurance, policies, and the fee schedule. There is also a new rule that registrants must properly supervise all probationers as required in the probation agreement with the court. The new professional conduct rules include the following:

No registrant or employee may accept a gift, gratuity, or favor from a probationer, probationer's family, or any person with the intent of influencing a probationer's supervision.

No registrant or employee may charge any fees not in the registrant's fee schedule unless ordered by a court or otherwise required by law.

No owner or employee of the registrant may engage in a romantic or sexual relationship or have any sexual contact with a probationer. No owner or employee may use his or her supervisory position to encourage or otherwise force a probationer to engage in sexual activity.

All registrants and employees must treat all probationers and members of the court in a professional manner. Unprofessional treatment includes, but is not limited to:

Engaging in abusive, aggressive, hostile, or disrespectful conduct.

Engaging in fraudulent or misleading behavior.

Giving any false impression of arrest authority.

Engaging in harassment or discrimination.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to Tenn. Code Ann. § 16-3-909(a)(2), the council is required to "promulgate uniform professional standards and uniform contract standards for private entities." There are no known federal law or regulations mandating promulgations of such rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule affects currently 38 licensed private probation companies and a total of 200 private probation officers that are employed by those companies. The members of the Council urged adoption of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There is no know attorney general and reporter opinion or judicial ruling that directly relates to these rules. There is a case pending in U.S. District Court for the Middle District of Tennessee styled Cindy Rodriguez, et al. v. Providence Community Corrections, Inc., et al. (Docket 3:15-cv-01048) wherein allegations of violations of registrant Providence Community Corrections, Inc. that would be addressed with these rules for similar type cases in the future.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is not an estimated probable increase or decrease in state or local government revenues and expenditures resulting from the promulgation of these rules.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Anthony Glandorf, Chief Counsel
Allison Ratton, Assistant General Counsel

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Anthony Glandorf, Chief Counsel
Allison Ratton, Assistant General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Anthony Glandorf
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072

Allison Ratton
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

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REDLINE Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Private Probation Services Council
Division:	Department of Commerce and Insurance
Contact Person:	Allison Ratton, Assistant General Counsel
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Revision Type (check all that apply):

- Amendment
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Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. 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 ~~one dollar (\$1.00)~~ 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 – <u>Code of Professional Conduct</u>	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; ~~and~~
 - (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 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 such 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.
- (4)(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.

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, ~~or~~ 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 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)

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 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.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Judge Chris Craft	X				
Judge Klyne Lauderback	X				
Judge John Hudson	X				
Judge Hugh Harvey	X				
Stancil Ford	X				
Lynda Byford	X				
Veronica Thornton	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Private Probation Service Council on 03/11/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/16/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 03/11/2016

Date: _____

Signature: _____

Name of Officer: Allison Ratton

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Craig Turner, General Manager for Correctional Services Incorporated dba Tennessee Correctional Services provided a written comment requesting that the Council amend its proposed amendment of Rule 1177-2-.03(g) to prohibit any licensee from accepting payments for court costs or fines from persons placed on supervised probation or diversion by a court in the State of Tennessee.

Response: The council members do not believe this proposed rule change is an issue to be addressed at this time, but suggest that it may be taken up later. Members commented that a private probation company may be required to monitor court cost being paid as a term of the probationary order. However, this may be an issue that should be addressed by the Tennessee legislature in the future.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

This rule would impact all licensees of the Council regarding the fee reduction and also standards of practice.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

These new rules require a licensee to maintain a schedule of fees and establish a policy for indigent offenders along with proof of insurance. Such requirements reflect only a minimal part of the licensee's current business operation and do not create any additional reporting requirements. Accordingly, these requirements are not expected to create any additional training or hiring of persons with professional skills.

3. A statement of the probable effect on impacted small businesses and consumers;

The probable impact on small businesses is minor because the proposed rules do not create any additional requirements to the licensees' current operations. Likewise the general public will be marginally impacted, as this area of regulation only affects persons on probation. For probationers, however, the likely impact will be significant, especially in terms of transparency of fees and policy regarding indigent persons.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

Overall, the proposed rules reduce the burden on the licensees by decreasing the quarterly provider fee from \$1.00 to \$0.75. Although compliance with the record keeping requirements and the Code of Conduct is minimally burdensome, the burden is offset by the reduction in fees.

5. A comparison of the proposed rule with any federal or state counterparts:

There is no known state or federal counterpart to such rules regarding private probation services.

6. Analysis of the effect of the possible exemption of small businesses from all or any party of the requirements contained in the proposed rule:

Exemption of small businesses would prevent most licensees from enjoying the reduced quarterly provider fee of \$0.75. Exemption from the record keeping requirements would subject probationers to potential deceptive practices and hinder further investigations of violations of standards of conduct by the Council.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules are not estimated to have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules lower the quarterly provider fee that registrants must pay to the Council from one dollar (\$1.00) per probationer to seventy-five cents (\$0.75). These rules also add a code of professional conduct and clarify that registrants are required to keep and post certain items they are already required to have, such as insurance, policies, and the fee schedule. There is also a new rule that registrants must properly supervise all probationers as required in the probation agreement with the court. The new professional conduct rules include the following:

No registrant or employee may accept a gift, gratuity, or favor from a probationer, probationer's family, or any person with the intent of influencing a probationer's supervision.

No registrant or employee may charge any fees not in the registrant's fee schedule unless ordered by a court or otherwise required by law.

No owner or employee of the registrant may engage in a romantic or sexual relationship or have any sexual contact with a probationer. No owner or employee may use his or her supervisory position to encourage or otherwise force a probationer to engage in sexual activity.

All registrants and employees must treat all probationers and members of the court in a professional manner. Unprofessional treatment includes, but is not limited to:

Engaging in abusive, aggressive, hostile, or disrespectful conduct.

Engaging in fraudulent or misleading behavior.

Giving any false impression of arrest authority.

Engaging in harassment or discrimination.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Pursuant to Tenn. Code Ann. § 16-3-909(a)(2), the council is required to "promulgate uniform professional standards and uniform contract standards for private entities." There are no known federal law or regulations mandating promulgations of such rules.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule affects currently 38 licensed private probation companies and a total of 200 private probation officers that are employed by those companies. The members of the Council urged adoption of these rules.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

There is no know attorney general and reporter opinion or judicial ruling that directly relates to these rules. There is a case pending in U.S. District Court for the Middle District of Tennessee styled Cindy Rodriguez, et al. v. Providence Community Corrections, Inc., et al. (Docket 3:15-cv-01048) wherein allegations of violations of registrant Providence Community Corrections, Inc. that would be addressed with these rules for similar type cases in the future.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two

percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is not an estimated probable increase or decrease in state or local government revenues and expenditures resulting from the promulgation of these rules.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Anthony Glandorf, Chief Counsel
Allison Ratton, Assistant General Counsel

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Anthony Glandorf, Chief Counsel
Allison Ratton, Assistant General Counsel

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Anthony Glandorf
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072

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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None.