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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
JUL 27 2011
Clerk of the Courts

**IN RE: ADOPTION OF NEW RULE 17A,
RULES OF THE TENNESSEE SUPREME COURT**

M2011-01597-SC-RL2-RL

ORDER

Orders of deferral (judicial diversion) are governed by Tenn. Code Ann. § 40-35-313, and they currently are recorded in the uniform judgment document created by Tenn. Sup. Ct. R. 17. Because the granting of diversion does not constitute a judgment of conviction, the Court has determined that it would be more appropriate to record that disposition in an order. Accordingly, upon due consideration, the Court hereby adopts the new Tenn. Sup. Ct. R. 17A set out in the Appendix to this order. Because the District Attorneys General Conference and several counties will be required to reprogram computer systems which record case dispositions, the effective date for new Rule 17A and for the use of the uniform order of deferral (judicial diversion) shall be November 1, 2011.

The Court hereby directs the Administrative Office of the Courts ("AOC") to notify the trial judges, court clerks, and affected agencies of the adoption of the uniform order of deferral (judicial diversion). The AOC also shall provide them with an instruction manual regarding the use of the order.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters/West. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

FOR THE COURT:

Cornelia A. Clark
CORNELIA A. CLARK, CHIEF JUSTICE

APPENDIX

RULE 17A: ORDER OF DEFERRAL (JUDICIAL DIVERSION)

(1) The Order of Deferral (Judicial Diversion) appended to this rule is provided for the use of all trial judges of courts of record for cases in which the court defers proceedings against a qualified defendant and places the defendant on probation pursuant to Tenn. Code Ann. § 40-35-313. The district attorney general shall complete and file the order, including the certificate completed by the Tennessee Bureau of Investigation pursuant to Tenn. Code Ann. § 40-35-313, within 30 days of the granting of diversion. If there are multiple charges in the same indictment, a separate order shall be completed for each offense for which the court grants judicial diversion. The date of the order shall be the date upon which the diversion order is entered.

(2) After the required signatures have been obtained and the order has been entered, the court clerk shall forward a copy of the order to the state agencies and other entities identified by the Administrative Office of the Courts, and shall do so in the manner designated by the Administrative Office of the Courts.

(3) Pursuant to Tenn. Code Ann. § 40-35-313, the granting of judicial diversion will ultimately result in the dismissal of the charge or the entry of an adjudication of guilt. Pursuant to Tenn. Code Ann. § 40-35-209 and Tenn. Sup. Ct. R. 17, the district attorney general shall complete and file a uniform judgment document for each charge within 30 days of such dismissal or adjudication.

(4) The form of the order attached hereto is made a part hereof and incorporated herein by reference. The order will be provided to all trial judges of courts of record.

IN THE CRIMINAL/CIRCUIT COURT OF _____ COUNTY, TENNESSEE

Case Number: _____ Count #: _____ Counsel for the State: _____
 Judicial District: _____ Judicial Division: _____ Counsel for the Defendant: _____
State of Tennessee Retained Private Atty Appt Pub Def Appt
 vs. Counsel Waived Pro Se
 Defendant: _____ Alias: _____
 Date of Birth: _____ Sex: _____ Race: _____ SSN: _____
 Indictment Filing Date: _____ State Control # _____ State ID # _____
 County Offender ID # (if applicable) _____

ORDER OF DEFERRAL (JUDICIAL DIVERSION) Original Amended Corrected

On the _____ day of _____, 20____, the defendant:

| | |
|---|---|
| <input type="checkbox"/> Pled Guilty <input type="checkbox"/> Pled Nolo Contendere Was Found Guilty By: <input type="checkbox"/> Jury Verdict <input type="checkbox"/> Bench Trial | Indictment: Class (circle one) 1 st A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Indicted Offense Name AND TCA §: _____ Amended Offense Name AND TCA §: _____ Offense Date: _____ County of Offense: _____ Deferred Offense Name AND TCA §: _____ Deferred Offense: Class (circle one) A B C D E <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor |
|---|---|

Upon review of the case, the court finds the facts stated above as well as the following (**For Item 3, Check ONE Of The Two Boxes**):

1. The defendant is eligible for deferral of the prosecution pursuant to Tennessee Code Annotated section (T.C.A.) 40-35-313;
2. The Tennessee Bureau of Investigation has certified (per attached certificate) that the defendant does not have a prior felony or Class A misdemeanor conviction;
3. The defendant was not charged with a violation of a criminal statute the elements of which constitute abuse, neglect or misappropriation of the property of a vulnerable person as defined in T.C.A. 68-11-1004; **OR**
 The defendant agrees without contest or any further notice or hearing that the defendant's name shall be permanently placed on the registry governed by 68-11-1004, whereupon a copy of this order shall be forwarded by the clerk to the department of health;
4. The defendant consents to T.C.A. 40-35-313 deferral, as evidenced by the defendant's signature below; AND
5. The defendant should be granted a deferral of charges pursuant to T.C.A. 40-35-313.

It is, therefore, **ORDERED** that the prosecution in this case is deferred pursuant to T.C.A. 40-35-313, and the defendant is placed on probation pursuant to T.C.A. 40-35-303. The terms of both statutes and of T.C.A. 40-35-304, -305, and -308 through -312 are incorporated herein by reference thereto. In addition, the following terms and conditions apply to the defendant's probation.

Probation Term: Beginning _____ Ending _____ Supervised Unsupervised
Supervising Entity: _____

Conditions of Probation (Deferral) (CHECK ALL BOXES WHICH APPLY):

| | |
|---|--|
| <input type="checkbox"/> Submit to supervision by supervising entity <input type="checkbox"/> Obtain/Maintain gainful employment <input type="checkbox"/> Medical and/or mental health treatment <input type="checkbox"/> Pay expenses for drug or alcohol treatment (T.C.A. 40-35-313) <input type="checkbox"/> Refrain from possessing a firearm or other dangerous weapon <input type="checkbox"/> Pay sex offender tax/fine (T.C.A. 39-13-709 / T.C.A. 40-24-108) <input type="checkbox"/> Notify the court or supervising entity of change of residential address or employment <input type="checkbox"/> Remain within the boundaries of Tennessee unless supervising entity approves travel beyond <input type="checkbox"/> Remain within the following boundaries: _____ <input type="checkbox"/> Other conditions reasonably related to the purpose of the defendant's sentence and not unduly restrictive of the defendant's liberty or incompatible with the defendant's freedom of conscience, as specified in writing by the supervising agency. | <input type="checkbox"/> Report as directed by supervising entity or court <input type="checkbox"/> Meet defendant's family responsibilities <input type="checkbox"/> Drug assessment and/or treatment <input type="checkbox"/> Alcohol assessment and/or treatment <input type="checkbox"/> Pursue secular course of study or vocational training <input type="checkbox"/> Pay drug testing fund fee (T.C.A. 39-17-420) <input type="checkbox"/> Uncompensated community service: _____ hours |
|---|--|

Pay restitution: \$ _____ Total (\$ _____ per month/week (circle one))
 Pay supervision fees (T.C.A. 40-35-313): \$ _____ Total (\$ _____ per month/week (circle one))
 Pay court costs
 ADDITIONAL CONDITIONS: _____

 Defendant

ENTER this the _____ day of _____, 20____.

 JUDGE'S NAME

 JUDGE'S SIGNATURE

 Counsel for the Defendant

 Counsel for the State of Tennessee