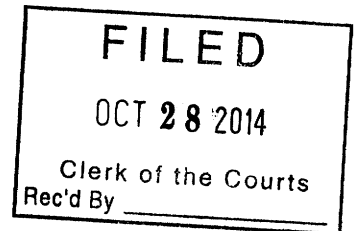


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE RULE 4(H),
RULES OF THE TENNESSEE SUPREME COURT

No. ADM2014-02118



ORDER

Rule 4(H)(1), Rules of the Tennessee Supreme Court, currently provides that “[a] copy of any unpublished opinion cited shall be furnished to the court and all parties by attaching it to the document in which it is cited.” Rule 4(H)(2) goes on to require that the copies provided must contain a notation indicating “whether or not an application for permission to appeal has been filed and, if filed, the date and disposition of the application.” In light of the availability of many unpublished opinions on internet-based electronic databases, such as LexisNexis and Westlaw, the Court is considering an amendment to Rule 4(H) to dispense with the requirement that copies of unpublished opinions be furnished to the court and all other parties, unless the unpublished opinion is not available on an internet-based electronic database or unless required by a local rule of court.

The Appendix to this order sets out the proposed amendments to Rule 4(H)(1) and (2). The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties concerning the proposed amendments. The deadline for submitting written comments is Wednesday, December 31, 2014. Written comments should be addressed to:

James Hivner, Clerk
Re: Rule 4(H)
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should include the docket number set out above.

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

IT IS SO ORDERED.

PER CURIAM

APPENDIX

[The proposed amendments to Tenn. Sup. Ct. R. 4(H)(1) and (2) are indicated below by underlining (new text) and ~~overstriking~~ (deleted text):]

1 Rule 4. Publication of Opinions. – Not for Citation Designation – Precedential Value
2 and Citation of Unpublished Opinions.

3 (A)(1) As used in this Rule, “publication” means publication in the official reporter
4 (Southwestern Reporter 2d).

5 (2) Unless explicitly designated “Not For Publication,” all opinions of the Tennessee
6 Supreme Court shall be published in the official reporter. Concurring and dissenting opinions
7 shall be published along with the majority opinion.

8 (3) Opinions of the Special Workers’ Compensation Appeals Panels shall not be
9 published unless publication is ordered by a majority of the Supreme Court.

10 (4) The Clerk of this Court will promptly file opinions of this Court. A copy of the
11 opinions shall be provided to the Attorney General and Reporter upon filing.

12 (B) No opinion of the Court of Appeals or Court of Criminal Appeals shall be
13 published in the official reporter until after the time for filing an application for permission
14 to appeal has expired.

15 (C) If an application for permission to appeal is filed and granted, the opinion of the
16 intermediate appellate court shall not be published in the official reporter, unless otherwise
17 directed by the Tennessee Supreme Court.

18 (D) If an application for permission to appeal is filed and denied, the opinion of the
19 intermediate appellate court may be published in the official reporter in accordance with the
20 rules of the intermediate appellate court if the opinion meets one or more of the following
21 standards of publication:

22 (i) the opinion establishes a new rule of law, alters or modifies an existing rule, or
23 applies an existing rule to a set of facts significantly different from those stated in other
24 published opinions;

25 (ii) the opinion involves a legal issue of continuing public interest;

26 (iii) the opinion criticizes, with reasons given, an existing rule of law;

27 (iv) the opinion resolves an apparent conflict of authority, whether or not the earlier
28 opinion or opinions are reported;

29 (v) the opinion updates, clarifies or distinguishes a principle of law; or

30 (vi) the opinion makes a significant contribution to legal literature by reviewing either
31 the development of a common law rule or the legislative or judicial history of a provision of
32 a constitution, statute, or other written law. See Court of Appeals Rule 11(b) and Court of
33 Criminal Appeals Rule 19.1(a).

34 (E)(1) If an application for permission to appeal is hereafter denied by this Court with
35 a “Not for Citation” designation, the opinion of the intermediate appellate court has no
36 precedential value.

37 (2) An opinion so designated shall not be published in any official reporter nor cited
38 by any judge in any trial or appellate court decision, or by any litigant in any brief, or other
39 material presented to any court, except when the opinion is the basis for a claim of res
40 judicata, collateral estoppel, law of the case, or to establish a split of authority, or when the
41 opinion is relevant to a criminal, post-conviction or habeas corpus action involving the same
42 defendant.

43 (3) From and after the effective date of this Rule, the precedential and citation value
44 applicable to intermediate appellate court decisions designated “Not for Citation,” shall also
45 apply to intermediate appellate court decisions which have previously been designated,
46 “Denied, Concurring in Results Only” (DCRO), or “Denied, Not for Publication,” (DNP).

47 (F) If no application for permission to appeal is filed, or if an application is filed but
48 dismissed as untimely, publication of the intermediate appellate court opinion shall proceed
49 in accordance with either Court of Appeals Rule 11 or Court of Criminal Appeals Rule 19.

50 (G)(1) An unpublished opinion shall be considered controlling authority between the
51 parties to the case when relevant under the doctrines of the law of the case, res judicata,
52 collateral estoppel, or in a criminal, post-conviction, or habeas corpus action involving the
53 same defendant. Unless designated “Not For Citation,” “DCRO” or “DNP” pursuant to
54 subsection (F) of this Rule, unpublished opinions for all other purposes shall be considered
55 persuasive authority. Unpublished opinions of the Special Workers’ Compensation Appeals
56 Panel shall likewise be considered persuasive authority.

57 (2) Opinions reported in the official reporter, however, shall be considered controlling
58 authority for all purposes unless and until such opinion is reversed or modified by a court of
59 competent jurisdiction.

60 (H)(1) If an unpublished opinion cited by a party is available from an internet-based
61 electronic database (e.g., Westlaw or LexisNexis), and if the citation to the unpublished case
62 includes both the appropriate citation to the electronic database and the information required
63 by paragraph (H)(2) of this Rule, the party is not required to furnish the court and all other
64 parties with a copy of the unpublished opinion. The foregoing sentence, however, does not
65 preclude a judicial district from adopting a local rule of court requiring parties to furnish the
66 trial court and the other parties with copies of unpublished opinions. See Tenn. Sup. Ct. R.
67 18 (“Local Rules of Practice in the Trial Courts of Tennessee”). In the event an unpublished
68 opinion cited by a party is not available from an internet-based electronic database, a ~~A~~ copy
69 of ~~any the~~ unpublished opinion ~~cited~~, with the notation required by paragraph (H)(2) of this
70 Rule, shall be furnished to the court and all other parties by attaching it to the document in
71 which it is cited.

72 (2) The citation to any unpublished decision relied upon by a party, as well as the title
73 page of any copy of ~~the copies and any citation to the~~ an unpublished decision for which an
74 electronic-database citation is not available, shall contain a notation indicating whether or
75 not an application for permission to appeal has been filed and, if filed, the date and
76 disposition of the application. Where appropriate, the notation shall indicate that an
77 application has been filed and is currently pending.

78 *[end of Appendix]*