

**From:** "Rhonda R. Williamson" <jrwilliamson@blomand.net>  
**To:** <lisa.marsh@tncourts.gov>  
**Date:** 05/17/2013 12:58 PM  
**Subject:** TN Courts: Submit Comment on Proposed Rules

Submitted on Friday, May 17, 2013 - 12:58pm  
Submitted by anonymous user: [165.166.129.219]  
Submitted values are:

Your Name: Rhonda R. Williamson  
Your Address: 4145 Bybee Branch Road, McMinnville, TN 37110  
Your email address: jrwilliamson@blomand.net  
Your Position or Organization: Designated Court Reporter for the 31st  
Judicial District  
Rule Change: Supreme Court Rule 26  
Docket number: M2013-01132-SC-RL2-RL  
Your public comments: By allowing electronic recordings to be used as the  
official transcript on appeal, that takes away the majority of my job and my  
income. I do not believe that judges, lawyers, public defenders, district  
attorneys nor their clients will benefit from listening to recordings when  
they can have a printed copy in front of them or even have the transcript on  
their computer. Please do not change this Rule. The economy is bad enough  
without taking away more jobs and that is exactly what you are doing to all  
the criminal court reporters.

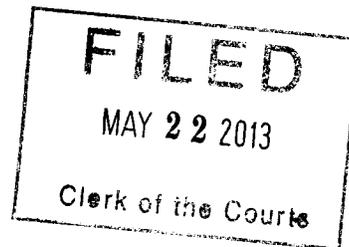
The results of this submission may be viewed at:  
<http://www.tncourts.gov/node/602760/submission/5850>



## CIRCUIT COURT

STATE OF TENNESSEE

TWENTY-SIXTH JUDICIAL DISTRICT



**NATHAN B. PRIDE**

CIRCUIT JUDGE  
DIVISION III

LASHONDA PATTERSON  
ADMINISTRATIVE ASSISTANT

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May 17, 2013

Mike Catalano, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

RE: M2013-01132-SC-RL2-RL - CD-Rom

Mr. Catalano:

I would like to express my dismay and disapproval of the potential use by all Courts of electronic recording of trial court proceedings under Rule 26. It appears as if it may be the long-term intent to use the CD-Rom recorded Court proceeding in lieu of the actual Court Reporter that is now in place in most districts including the 26th District, where I serve as Circuit Court Judge of Division III.

The use of such devices cannot replace, by any means, the hands-on ability of an actual reporter to adjust, correct, read back or assist with the ongoing trials on a long-term or regular basis.

Further, the use of Section 2.05 exhibit list in actual trials, would be burdensome, take away from the Judge's ability to pay close attention to the remaining proceedings of the Court and would undoubtedly be an additional administrative duty, which when the CD-Rom fails or has problems, would assume to be the responsibility of Trial Judges to correct, monitor or explain why the same was not or did not act accordingly.

Thusly, for the aforesaid reasons, and the fact that use of CD-Rom equipment to record court proceedings would undoubtedly add to the confusion, complexity and in some cases, unnecessary delay of both regular proceedings and appellate proceedings.

Therefore, I would recommend that the Supreme Court not expand the use of such CD-Rom to record court proceedings beyond the Sixth Circuit Court for the 20th Judicial District. I thank you in advance for your attention and if there is anything else needed to express my opposition to the same, please let me know at once.

Sincerely,

NATHAN B. PRIDE  
Circuit Court Judge - Division III

# JERRY GONZALEZ, PLC

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JUN 10 2013

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Mike Catalano, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Ave. North  
Nashville TN 37219-1407

Re: Proposed Amendment to Tenn. Sup. Ct. R. 26  
Docket No. M2013-01132-SC-RL2-RL

Dear Mr. Catalano:

I write to express my view on the proposed amendment to Rule 26 of the Tennessee Supreme Court.

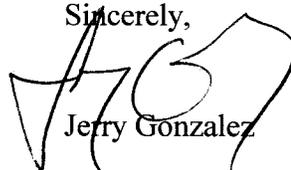
As an attorney who regularly practices in both state and federal courts in Tennessee, I have often lamented the snail's pace with which Tennessee courts have transitioned, or thought of transitioning, to electronic case filing and use of other electronic technology. I continue to be amazed as I enter state courts and find, in some cases, court reporters in a criminal court who still record proceedings in handwriting on paper stenographic notebooks. Why such an archaic form of court reporting is still allowed is a complete mystery to me. In other courts, for example Davidson County Criminal Courts, a machine shorthand court reporter may be present with courtroom camera equipment as "back up". But I have noticed that for much of the proceeding the court reporter is not typing on the steno machine. I have come to find out later that the court reporter is merely transcribing the proceeding from the video or audio recording that was supposed to be merely for backup. The use of the machine shorthand machine is merely a ruse to make it look like the transcription is a simultaneous and verbatim recording. Of course, this begs the question: If the court reporter is going to transcribe the proceeding from the video recording anyway, what is the purpose behind requiring a court reporter to be present and pretend to type on the shorthand machine?

In the civil cases I do, I record absolutely every deposition by use of a digital video camera. I then have the audio transcribed and synchronized with the video and then I can snip the appropriate parts of the deposition video to play at trial with the typewritten testimony scrolling at the bottom of the screen. This is far and away more effective for keeping the judge's and jury's attention than the traditional method of having someone sit in the witness box and read answers from a paper transcript while the lawyer reads the questions from the podium.

With this background, I make the following comments with reference to the specific sections of the proposed rule.

- 1.01 I encourage the Supreme Court to allow all Tennessee courts to implement electronic recordings in lieu of a court reporter, not just those authorized by the Court. When you consider the annual cost of an official court reporter (salary, benefits, etc.), an electronic recording system easily pays for itself in a very short amount of time. There is absolutely no logical justification for designating only a handful of courts. Additionally, I encourage the rule to specifically allow any attorney who is willing to pay for the cost to video record any court proceeding and allow the same to be certified as a true copy in lieu of an official record, just as is done in depositions.
- 2.04 The suggested cost of \$50 per disc or other media format is excessive. If an attorney provides the clerk with a 64 GB flash drive to burn a video of a trial, it costs the court nothing to do so. In fact, inserting the flash drive into the system and locating and designating the digital file to burn should take no more than 20 minutes. Why should the fee be \$50 for such a simple task? (By the way, only a very small digital video file or one that has been compressed (and therefore with reduced resolution) will fit on a DVD. I predict that DVD's will go the way of the 8 track cassette very soon. The current trend is to online transfers via websites such as dropbox.) This fee will only serve as a disincentive to get copies of the video. Likewise, there is no reason to raise the charge to \$100 for duplicate copies. The cost should be limited to actual cost, nothing more.
- 2.06 This rule should be modified to explicitly allow the use of video depositions at trial. If the rule leaves it to the judge's discretion, many judges who are unfamiliar and uncomfortable with technology may forbid its use for no other reason than their personal discomfort with new technology.
- 4.01 With digital video recordings, it is very difficult to include a date/time stamp on the digital file itself. The only way to do this is to have the file played from the digital camera onto a monitor and then record the video from the monitor. If the file is directly transferred from the digital camera to a computer and saved as an .mpg file, it will not contain the date/time stamp. Similarly, the digital file will not contain a time stamp that shows "pm" or "am" but rather a running clock starting at zero (e.g., 00:00:00).

I encourage the Court to continue to push for use of technology in the courtroom and specifically to the eventual (and long overdue) implementation of electronic case filing similar to that implemented in the federal court system. The current paper based system in Tennessee courts is archaic, dysfunctional, and extremely unproductive and costly. Similarly, the use of courtroom video recording equipment and the use of such to create an electronic and official record of proceedings in lieu of an official machine-shorthand court reporter will move Tennessee courts into the 21<sup>st</sup> century.

Sincerely,  
  
Jerry Gonzalez

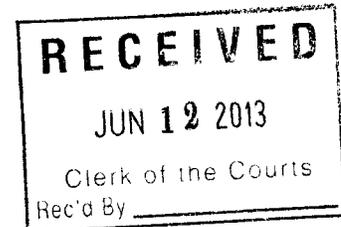
*J. Terry Holland*  
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June 10, 2013



Mike Catalano, Clerk  
Re: Tenn. S up. Ct. R. 26  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, Tennessee 37219-1407

Re: No. M2013-1132-SC-RL2-RL

Dear Mr Catalano,

I have recently discovered the Supreme Court Order filed May 13, 2013 involving Rule 26 of the Tennessee Supreme Court Rules. I am concerned about the proposed use of official electronic recording of the Court proceedings here in Knox County and surrounding vicinity. Candidly, my concerns are far too many to list in this letter. They truly revolve to some extent around the actual method of doing what is being proposed but, at least, some involve costs as well. Let me explain.

1. Costs

With regard to costs, I represent a varied clientele in the general practice of civil trials as well as civil office practice here in Knoxville. From time to time, I go to the outer county region including the seven or eight counties surrounding Knox County with more emphasis in Anderson, Loudon and Blount than the counties east of Knoxville, primarily because my office is located in West Knoxville.

Servicing this group of people might appear to involve the wealthier sections of Knoxville and the surrounding communities. Would that that were so. I note that each year, the Board wishes us to give an estimate of pro bono work that we do both individually and for non-profits and things of that nature. While I do not document that as I would for someone that was actually paying me on an hourly basis, I have usually dedicated at least fifty hours and often times a whole lot more. At least a part of this is that I refuse to charge to any Church for anything that I do, thinking that that is simply one of the objects of this profession. Churches do great good in the community and due to economic crises that we now face, are certainly more reliable than governmental usages as well.

From time to time, in representing a pro bono clientele that do not have the

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money to pay for our services, we nonetheless find it necessary to involve court reporters and transcripts. I find it interesting that the proposal is to charge Fifty Dollars for the first disk and One Hundred Dollars for that same disk copied a second time. I don't understand the break-down or why it needs to be that way. Admittedly, it could be because I do not understand the way this is being done but it seems to me that in the current realm, a copy of an official record is usually about a third of the costs and now it is going to be two hundred percent of the original cost. That seems odd to me but undoubtedly there is a reason. I don't find the reason in my review of what has been transmitted to me, which essentially is supposed to be all of the official record.

2. Procedure:

It seems to me that the procedure is going to require every lawyer to maintain video taping and review equipment. While I certainly have that, I am not sure my counter in foot usage or whatever is going to work. Obviously, a date/time generation is what you are asking for but that may be more difficult to use. I might add that I have significant experience using video depositions and so forth including depositions taken in other Countries such as England and Nova Scotia. That was just the most recent case in which we have done work in that regard utilizing video taping both here and abroad. Maybe it is just me but it seems easier to have printed copies of transcripts.

3. Use of Transcripts:

It looks to me like the Court may well order transcripts themselves to keep from having to observe significant portions of a trial to get the full import of what is being said in Appellate recitation of testimony. That would seem to increase the costs in addition to what we already have which likewise appears to be cost intensive particularly for the copies.

4. Local Rules

Just as an observation from a lawyer who was licensed in 1974 and has practiced continuously since that time, I would make two observations concerning Local Rules. Often times we have rules in local jurisdictions which don't simply augment or expand on the State Ordered Rules of Procedure but often change the full scope of the rules. Just one example, I think, needs to be uttered in this regard. A number of jurisdictions surrounding Knox County require disclosure of what lay witnesses are going to say. Court of Appeals decisions back in the mid '80's indicated that while an identification of a lay witness with knowledge is demanded, if asked, and must be provided, you are not required to say what that witness may know. This has been modified by Local Rules in a number of counties where you are required to state exactly what they know, which discloses trial preparation and work product of one side to the other. I certainly understand the rationale utilized by the Judges who do this. They want no trials by ambush. On the other hand, while one lawyer goes out and works

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hard on his case and does the discovery requested required, and investigation leading to that discovery, the other lawyer may simply send a Interrogatory and demand everything that lawyer "A" has investigated. This puts the premium on doing it last, not doing it first, so as to reduce fees and compensation as well as expenses to the client. Interestingly enough, that is usually used by the insurance company not the Plaintiff who, in most cases, is the one who has already suffered significant loss for which they are now in litigation.

Based on all of the above, it appears to me that if we are going to allow Local Rules to augment and expand this, the next thing we know, we may have some jurisdictions which the costs is incredibly higher than other jurisdictions just for doing this.

One more for instance is although there are going to be two recordations certified by the Clerk, mistakes such as equipment failures occur all the time and there is no actual stated provision for a monitoring of both systems while the trial is ongoing or any Motion hearings that may be handled in this same manner. What if the equipment does not work? If there is monitoring required or that could be required by a Judge with Local Rules implementation, that's not all bad but at the same time, there is the same cost factors of a current live court reporter certified to do so.

My issues with this go much further. Currently, we have an operation with some State supervision, court reporters who are certified as official reporters. We have some problems there in that out of state and out of country agencies want to horn in on the official reporting organizations but those problems can easily be dealt with if the Legislature is of a mind to do so. On the other hand, what are we going to do if the monitor of the recording system itself is not specifically certified and if so, we are just adding another layer where a mistake or mistakes could be made. I, for one, like a lot of lawyers from time to time, try to talk over the other lawyer or a witness particularly when the witness is not being responsive. A court reporter sitting there can raise her hand and say "stop, I can only get one of you at a time". I don't think that works so well with my experience with video recording with the best video taping and recording organization in East Tennessee whom I always use. What we get into with this new thing may change Appellate work and not for the best.

In conclusion, I believe the Supreme Court needs a great deal more investigation and questions answered such as the ones set forth above and others that I and others may have before this is voted on to implement same. I might further add, that while I get the Advance Sheets and have Westlaw, I have not seen this material until late last week in conversation with another individual in the Judicial system who was aware of same. The publication of this has not been the best in the world in my opinion.

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Mike Catalano, Clerk  
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With kindest personal regards, I remain

Yours very truly,

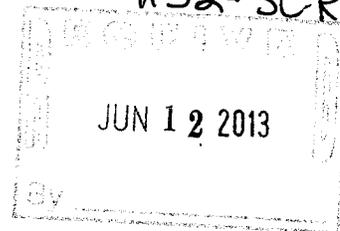


J. Terry Holland

JTH/lmh  
Rule 26 letter to Court



M2013-1132-SCRL2-RL



## State Court Clerks Association of Tennessee

### MEMORANDUM

TO: Mike Catalano, Clerk, Tennessee Appellate Courts

FROM: Fred Chaney, President, Tennessee State Court Clerks Association *7c by Jwest*

DATE: June 12, 2013

RE: Proposed revision of Rule 26, Rules of the Tennessee Supreme Court

On behalf of the Tennessee State Court Clerks Association, I submit the following comment regarding the proposed amendment to Rule 26, Rules of the Tennessee Supreme Court.

As written, the proposed amendment to Rule 26 applies to all courts of record in Tennessee, both criminal and civil. To avoid confusion regarding the application of the rule, Section 1, 1.01 should clearly state that this rule applies only to the Sixth Circuit Court for the Twentieth Judicial District. Expansion of the application of Rule 26 to additional courts of record would then be introduced as a proposed amendment and be published for written comment.