

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENT TO RULE 10B, SECTION 2,
RULES OF THE TENNESSEE SUPREME COURT

FILED

APR 15 2013

Clerk of the Courts

No.

M2013-00911-SC-RL2-RL

ORDER

Rule 10B, Rules of the Tennessee Supreme Court, sets out the procedures for seeking the disqualification or recusal of a judge. In summary, the Rule provides that a party seeking the disqualification or recusal of a judge must file a written motion stating the specific grounds for disqualification or recusal and that the judge must then act promptly on the motion by written order. Section 2 of Rule 10B sets out the procedures for appealing a trial court's denial of such a motion for disqualification or recusal. The current version of Section 2, however, does not expressly state whether, and if so how, a party may seek the Supreme Court's review following an intermediate appellate court's ruling on a recusal appeal. The Court therefore is considering an amendment to Rule 10B, Section 2; the amendment would add a new Section 2.07 to provide for a discretionary appeal to the Supreme Court following an intermediate court's decision in a recusal appeal.

The proposed amendment is set out in the appendix to this order. The Court hereby solicits written comments regarding the proposal from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Wednesday, May 15, 2013. Written comments should be addressed to:

Mike Catalano, Clerk
Re: Rule 10B, Section 2.07
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference 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

PROPOSED AMENDMENT TO TENN. SUP. CT. R. 10B, SECTION 2

[For context, the text of the current Section 2 is set out below in its entirety; the proposed amendment would add the new subsection 2.07 indicated below by underlining:]

Section 2. Availability of Interlocutory Appeal as of Right Following Denial of Disqualification or Recusal Motion.

Proposed amendment

2.01. If the trial court judge enters an order denying a motion for the judge's disqualification or recusal, or for determination of constitutional or statutory incompetence, an accelerated interlocutory appeal as of right lies from the order. The failure to pursue an accelerated interlocutory appeal, however, does not constitute a waiver of the right to raise any issue concerning the trial court's ruling on the motion in an appeal as of right at the conclusion of the case. The accelerated interlocutory appeal or an appeal as of right at the conclusion of the case shall be the exclusive methods for seeking appellate review of any issue concerning the trial court's denial of a motion filed pursuant to this Rule.

2.02. To effect an accelerated interlocutory appeal as of right from the denial of the motion, a petition for recusal appeal shall be filed in the appropriate appellate court within fifteen days of the trial court's entry of the order. In civil cases, a bond for costs as required by Tenn. R. App. P. 6 shall be filed with the petition. A copy of the petition shall be promptly

served on all other parties, and a copy also shall be promptly filed with the trial court clerk. For purposes of this section, "appropriate appellate court" means the appellate court to which an appeal would lie from the trial court's final judgment in the case.

2.03. The petition for recusal appeal shall contain:

(a) A statement of the issues presented for review;

(b) A statement of the facts, setting forth the facts relevant to the issues presented for review;

(c) An argument, setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities; and

(d) A short conclusion, stating the precise relief sought. The petition shall be accompanied by copies of any order or opinion and any other parts of the record necessary for determination of the appeal.

2.04. The filing of a petition for recusal appeal does not automatically stay the trial court proceeding. However, either the trial court or the appellate court may grant a stay on motion of a party or on the court's own initiative, pending the appellate court's determination of the appeal.

2.05. If the appellate court, based upon its review of the petition and supporting documents, determines that no answer from the other parties is needed, the court may act summarily on the appeal. Otherwise, the appellate court shall order that an answer to the petition be filed by the other parties. The court, in its discretion, also may order further briefing by the parties within the time period set by the court.

2.06. The appeal shall be decided by the appellate court on an expedited basis upon a de novo standard of review. The appellate court's decision, in the court's discretion, may be made without oral argument. Any order or opinion issued by the appellate court should state with particularity the basis for its ruling.

2.07. In an accelerated interlocutory appeal decided by either the Court of Appeals or the Court of Criminal Appeals, a party may seek the Supreme Court's review of the intermediate court's decision by filing an accelerated application for permission to appeal. The application shall be filed in the Supreme Court within ten days of the filing date of the

intermediate court's order or opinion. The accelerated application shall include an appendix containing: (a) copies of the petition and supporting documents filed in the intermediate appellate court; (b) copies of any answer(s) filed by order of the intermediate appellate court; and (c) a copy of the order or opinion filed by the intermediate appellate court. A copy of the accelerated application for permission to appeal shall be promptly served on all other parties. In civil cases in which the party seeking the Supreme Court's review is not the party that filed the accelerated interlocutory appeal in the intermediate court, the party filing the accelerated application shall file with the application a bond for costs as required by Tenn. R. App. P. 6.

If the Supreme Court, based upon its review of the accelerated application for permission to appeal, determines that no answer from the other parties is needed, the Court may act summarily on the accelerated application. Otherwise, the Court shall order that an answer to the application be filed by the other parties. The Court, in its discretion, also may order further briefing by the parties within the time period set by the Court. The Supreme Court shall decide the appeal on an expedited basis and, in its discretion, may decide the appeal without oral argument.

The accelerated application for permission to appeal authorized by this section 2.07 is the exclusive method for seeking the Supreme Court's review of the intermediate court's

ruling on an accelerated interlocutory appeal filed under Section 2. The provisions of Tenn.

R. App. P. 11 therefore do not apply to such appeals.

*proposed
amendment*

[end of appendix]