

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: AMENDMENTS TO TENNESSEE
 RULES OF CRIMINAL PROCEDURE**

Filed: January 2, 2007

ORDER

The Court adopts the attached amendments effective July 1, 2007, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 1	SCOPE AND DEFINITIONS
RULE 4	ARREST WARRANT OR SUMMONS ON A COMPLAINT
RULE 5	INITIAL APPEARANCE BEFORE MAGISTRATE
RULE 11	PLEAS.

FOR THE COURT:

WILLIAM M. BARKER
CHIEF JUSTICE

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 1

SCOPE AND DEFINITIONS

(b) General Sessions Court.—

[Delete the word “and” following semi-colon in (b)(8), add new (b)(9) below, and change original (b)(9) to (b)(10) below:]

These rules govern the procedure in general sessions courts in the following instances:

* * * *

(9) the time computations for setting and the process for continuing preliminary examinations pursuant to Rule 45; and

(10) any other situation where the context clearly indicates applicability.

* * * *

(e) Definitions.—

* * * *

[amend (3) to read as follows:]

(3) Magistrate.— “Magistrate” includes all judges of courts of record in the state but is primarily intended to mean judges of courts of general sessions. It also includes judicial commissioners and justices of the peace when they perform any of the functions contemplated by these rules.

2007 Advisory Commission Comment

The comments to Rule 5 cross-reference the time for setting the preliminary hearing to the time computation provisions of Rule 45. However, Rule 45 does not explicitly apply to general

sessions courts by its omission from Rule 1. The 2007 amendment to Rule 1(b)(9) corrects this omission but only concerning the time for setting, and process for continuing, the preliminary hearing once set. There is no intent to impact the requirements of Rule 5(a)(1) dictating that, with certain exceptions, an arrested person must be “taken without unnecessary delay before the nearest appropriate magistrate.” As a result of the 2007 amendment adopting a new (b)(9), the then-existing (b)(9) was renumbered as (b)(10).

The amendment to Rule 1(e)(3) adds “judicial commissioners” to the definition of a magistrate. This alteration makes the rule appropriately consistent with Tenn. Code Ann. §40-5-102 as it relates to courts which exercise jurisdiction at the initial stages of the criminal process as Rules 4 and 5 contemplate.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 4

ARREST WARRANT OR SUMMONS ON A COMPLAINT

[add new comment below:]

2007 Advisory Commission Comment

Tenn. Code Ann. §§ 40-6-205 and 40-6-215 require that a summons be issued instead of a warrant in certain circumstances.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 5

INITIAL APPEARANCE BEFORE MAGISTRATE

[amend the first portion of (c)(1) to read as follows:]

(c) Other Misdemeanors.

(1) Upon Plea of Guilty. –If the offense charged is a misdemeanor, but of greater magnitude than a small offense, the magistrate shall inquire how the defendant pleads to the charge.

If the plea is guilty, the plea shall be reduced to writing. The following rules shall then apply:

* * * *

2007 Advisory Commission Comment

Tenn. Code Ann. §40-1-109 requires a written guilty plea for misdemeanors. The amendment to subsection (c) conforms the rule to the statute.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 11

PLEAS

[amend (b)(1)(I) and (e) as follows:]

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.—

(1) * * * *

(I) if the defendant pleads guilty or nolo contendere, the court may ask the defendant questions about the offense to which he or she has pleaded. If the defendant answers these questions under oath, on the record, and in the presence of counsel, the answers may later be used against the defendant in a prosecution for perjury or aggravated perjury.

* * * *

(e) Record of Proceedings and Written Plea.—There shall be a verbatim record of the proceedings at which the defendant enters a plea. If there is a plea of guilty or nolo contendere, the record shall include the inquiries and advice to the defendant required under Rule 11(b) and (c). The plea of guilty or nolo contendere shall be reduced to writing and signed by the defendant.

2007 Advisory Commission Comment

Prior subsection (b)(1)(I) provided that a defendant may be subject to prosecution for “perjury or false statement.” False statement is no longer an offense in Tennessee, and aggravated perjury is a new offense enacted in 1989. Thus, the subsection was amended to “perjury or aggravated perjury.”

Tenn. Code Ann. §40-1-109 requires a written guilty plea for misdemeanors. The amendment to subsection (e) conforms the rule to the statute but expands the concept so that all guilty or nolo contendere pleas are written. This has long been the practice in general sessions and criminal courts.