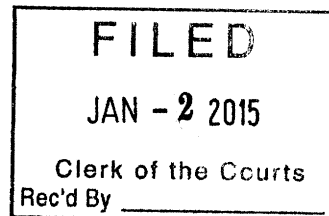


**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

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

No. ADM2014-01791



ORDER

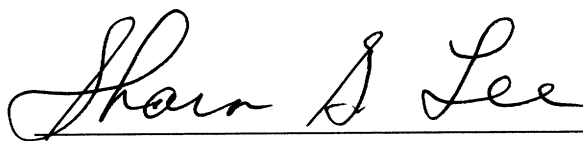
The Court adopts the attached amendments effective July 1, 2015, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 11 PLEAS
RULE 41 SEARCH AND SEIZURE
RULE 49.1 FACSIMILE FILING OF PAPERS.

The text of each amendment is set out in the attached Appendix.

IT IS SO ORDERED.

FOR THE COURT:



SHARON G. LEE, CHIEF JUSTICE

APPENDIX

**2015 AMENDMENTS TO THE
TENNESSEE RULES OF CRIMINAL PROCEDURE**

In the attached amended rules, ~~overstriking~~ indicates deleted text
and underlining indicates added text.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 11

PLEAS

[Amend subdivision (b)(1) as indicated below (deleted text is overstricken and new text is underlined):]

(a) * * * *

(b) CONSIDERING AND ACCEPTING A GUILTY OR NOLO CONTENDERE PLEA.

(1) ADVISING AND QUESTIONING THE DEFENDANT. — Before accepting a guilty or nolo contendere plea, the court shall address the defendant personally in open court and inform the defendant of, and determine that he or she understands, the following:

(A) The nature of the charge to which the plea is offered;

(B) the maximum possible penalty and any mandatory minimum penalty;

(C) if the defendant is not represented by an attorney, the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and every other stage of the proceeding;

(D) the right to plead not guilty or, having already so pleaded, to persist in that plea;

(E) the right to a jury trial;

(F) the right to confront and cross-examine adverse witnesses;

(G) the right to be protected from compelled self incrimination;

(H) if the defendant pleads guilty or nolo contendere, the defendant waives the right to a trial and there will not be a further trial of any kind except as to sentence;

(I) if the defendant pleads guilty or nolo contendere, the court may ask the defendant questions about the offence 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; and

(J) if the defendant pleads guilty or nolo contendere, it may have an effect upon the defendant's immigration or naturalization status, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequences of a plea; and

(K) if the defendant pleads guilty or nolo contendere to an offense for which he or she will receive an additional sentence of community supervision for life, the fact that he or she will receive the additional sentence, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the community supervision for life sentence and its consequences.

(c) * * * *

Advisory Commission Comment [2015]

Subdivision (b)(1) was amended to add paragraph (K) to conform the rule to the requirements of case law. “Because the mandatory lifetime supervision requirement is an additional part of a defendant’s sentence, the trial court is constitutionally required to inform the defendant of the supervision requirement as part of the plea colloquy.” *Ward v. State*, 315 S.W.3d 461, 474 (Tenn. 2010). *See also State v. Nagele*, 353 S.W.3d 112 (Tenn. 2011) (defendant allowed to withdraw guilty plea because trial court did not inform defendant of lifetime community supervision requirement and State failed to establish error was harmless beyond a reasonable doubt because defense counsel’s advice to defendant about the requirement was ambiguous); *Calvert v. State*, 342 S.W.3d 477, 491 (Tenn. 2011) (defense counsel’s failure to inform defendant about lifetime supervision requirement is deficient performance and defendant will be entitled to post-conviction relief if he establishes “by clear and convincing evidence a reasonable probability that, but for defense counsel’s failure to inform him of the mandatory lifetime community supervision aspect of his sentence, he would have declined to plead guilty”).

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 41

SEARCH AND SEIZURE

[Amend subdivision (c) by adding the following new (c)(2) and by renumbering the current (c)(2) and (c)(3) as the new (c)(3) and (c)(4), respectively (deleted text is overstricken and new text is underlined):]

(a) * * * *

(c) ISSUANCE AND CONTENT OF WARRANT. —

(1) ISSUANCE. — * * * *

(2) REQUESTING A WARRANT BY ELECTRONIC MEANS. — A magistrate may issue a warrant based on information communicated by telephone or other reliable electronic means. The proposed warrant, the signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the magistrate, who may act upon the transmitted documents as if they were originals. If the warrant is being sought by electronic means rather than face-to-face, the warrant affidavit shall be sworn to or affirmed by administration of the oath by audio-visual means by the magistrate, and the examination of the affiant by the magistrate shall also be by audio-visual means; provided, the warrant affidavit shall be in writing and received by the magistrate prior to the administration of the oath and examination of the affiant. The affidavit

with electronic signature received by the magistrate and the warrant approved by the magistrate, signed with electronic signature, shall be deemed originals. The magistrate shall facilitate the filing of the original warrant with the clerk of the court and shall take reasonable steps to prevent tampering with the warrant. The issuing magistrate shall retain a copy of the warrant as part of his or her official records. The issuing magistrate shall issue a copy of the warrant, with electronic signatures, to the affiant. This section does not alter the requirement that the affidavit be submitted to the magistrate in writing regardless of the means of transmission.

(23) CONTENT. — * * * *

(34) HEARSAY. — * * * *

(d) * * * *

Advisory Commission Comment [2015]

Subdivision (c) was amended by adding a new paragraph (2) (and renumbering what are now paragraphs (3) and (4)). New paragraph (c)(2) allows a search warrant to be obtained without requiring the affiant and the issuing magistrate to be in each other's physical presence during the application/issuance process. The amendment to the rule does not alter the requirement that the affidavit be submitted to the magistrate in writing regardless of the means of transmission.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 49.1

FACSIMILE FILING OF PAPERS

[Amend subdivision (b)(2)(D) as indicated below (deleted text is overstricken and new text is underlined):]

(a) DEFINITIONS. —

* * * *

(b) FACSIMILE FILING; EXCEPTIONS. —

(1) * * * *

(2) EXCEPTION: FACSIMILE FILING NOT PERMITTED. — The following documents shall not be filed in the trial court by facsimile transmission:

(A) An appeal from a lower court to a circuit/criminal court;

(B) A notice of appeal to an appellate court;

(C) The affidavit of complaint for an arrest warrant or summons (see Tenn. R. Crim. Proc. 4);

(D) ~~Search warrants, affidavits, returns, and inventories (see Tenn. R. Crim. Proc. 41) [Reserved];~~

(E) A confidential document that the court previously has ordered to be filed under seal; and

(F) Indictments, presentments, and informations.

(c) * * * *

Advisory Commission Comment [2015]

The 2015 amendment deleted the text of subdivision (b)(2)(D), which listed “Search warrants, affidavits, returns, and inventories (see Tenn. R. Crim. P. 41)” among the documents that could not be filed by facsimile transmission. The deletion of “Search warrants, affidavits, returns, and inventories” from Tenn. R. Crim. P. 49.1(b)(2) does not mean that those documents may now be filed by fax *under Tenn. R. Crim. P. 49.1*. Rather, the Commission concluded for several reasons that Tenn. R. Crim. P. 49.1 did not actually apply to the search-warrant process. The most important of those reasons is that the procedures for obtaining a search warrant are governed by Tenn. R. Crim. P. 41, and that rule was simultaneously amended to authorize the use of electronic means (including facsimile transmission) in the search-warrant process. The Commission therefore concluded that deleting the text of subdivision (b)(2)(D) (and replacing it with “[Reserved]”) would avoid any inconsistency between the two rules. The Commission further concluded that Tenn. R. Crim. P. 41 properly governs the search-warrant process and that, as amended, Tenn. R. Crim. P. 49.1 no longer applies to that process, one way or the other.

[end of Appendix]