

COURT OF APPEALS

STATE OF TENNESSEE
WESTERN SECTION

PRESIDING JUDGE
J. STEVEN STAFFORD

ASSOCIATE JUDGES
ARNOLD B. GOLDIN
BRANDON O. GIBSON
KENNY W. ARMSTRONG

NANCY ACRED
CHIEF DEPUTY CLERK
SUPREME COURT BUILDING
P.O. BOX 909
JACKSON, TENNESSEE 38302

October 30, 2014

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

Re: Rule 4(H)
Docket # ADM2014-02118

Dear Mr. Hivner:

I have reviewed the Supreme Court's proposed revision to Rule 4(H)(1) of the Rules of the Tennessee Supreme Court. I believe the proposed revision is a welcome change. However, I do want to bring a potential issue to your attention. While most attorneys have unfettered access to Lexis and/or Westlaw, many pro se litigants do not. Pro se litigants, especially those who are incarcerated, may not even have Internet access. Additionally some attorneys may have a very limited database access and may not be able to access unpublished opinions outside of Tennessee.

Therefore, I propose that the amendment include a provision that either (a) does not require unpublished opinions be provided to the Court but does require those unpublished opinions be provided to all other parties; or (b) requires the party citing the unpublished opinion to provide a copy of the opinion to a party or party's counsel within five (5) days of a request from such party or party's counsel.

Sincerely,

A handwritten signature in cursive script that reads "Brandon O. Gibson".

Brandon O. Gibson

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

IN RE: PETITION TO AMEND RULE 4(H), RULES OF THE TENNESSEE SUPREME
COURT

2014 DEC 12 AM 11:16
APPELLATE COURT CLERK
NASHVILLE

No. ADM2014-02118 – Filed: October 28, 2014

RESPONSE TO INVITATION FOR PUBLIC COMMENT

In response to the Tennessee Supreme Court’s request for comment on a the proposed change to Rule 4(H) of the Tennessee Rules of the Supreme Court, the Executive Committee of the Tennessee District Public Defenders Conference wishes to express its support to a majority of the proposed change. In addition, the Executive Committee seeks to propose amendments to the proposed rule to address additional circumstances in which the Executive Committee believes the fairness to all parties may not be met.

I. SUPPORT FOR THE AMENDMENT OF RULE 4(H) AS IT PERTAINS TO APPELLATE LEVEL CASES

The Executive Committee of the Tennessee District Public Defenders Conference wishes to express its support of the proposed amendment to Rule 4(H) of the Rules of the Tennessee Supreme Court. The Conference believes the change proposed by the Court will lessen the workload of practitioners, their staff, and the clerks in Tennessee. The current practice of attaching physical copies of unpublished opinions often turns otherwise short briefs into behemoths. The change would save time and money for the parties and the court in such proceedings. However, the Executive Committee seeks two amendments to the proposal to address potential “pitfalls” in its application.

II. RECOMMENDATION FOR PRO SE LITIGANTS

For pro se litigants, or those without access to computer research, the Executive Committee of the District Public Defenders Conference endorses part (b) of the recommendation of Judge Gibson, of the Court of Appeals, Western Section.¹ Under this proposal the party citing the unpublished opinion is to provide a copy of the opinion to all other parties, or their counsel, within five (5) days upon request. The Executive Committee finds this to be an equitable solution in these circumstances.

III. RECOMMENDATION FOR TRIAL LEVEL PROCEEDINGS

To further expand on the recommendation of Judge Gibson, the Executive Committee of the Tennessee District Public Defenders seeks to point out potential difficulties at trial or pre-trial proceedings that may arise by the proposed change of Rule 4(H).

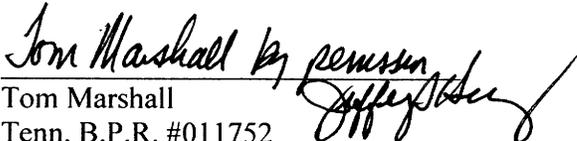
The proposed rule does not address the potential difficulties for a party when the opposing party files a brief or pleading with short notice, or the day of the court proceeding. This scenario potentially “blindsides” the opposing party, and could be addressed by a provision similar to that proposed for pro se litigants. Such a provision would require opposing parties to furnish physical copies of any unreported decisions, unless the citation to the unreported decision is filed in a pleading at least 10 days prior to any hearing.

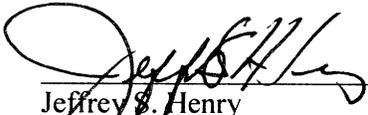
¹ See letter of Judge Gibson dated October 30, 2014 and received by the Clerk of Appellate Court on November 3, 2014.

In conclusion, the Executive Committee of the Tennessee District Public Defenders Conference reiterates its support of the change proposed by the Supreme Court of Tennessee in Order ADM2014-02118, and also requests that the Court consider the modifications suggested above.

Respectfully submitted,

Executive Committee of the Tennessee District Public Defenders Conference

By: 
Tom Marshall
Tenn. B.P.R. #011752
President
211 Seventh Avenue North, Suite 320
Nashville, TN, 37219-1821
Phone: 615-741-5562
Fax: 615-741-5568
Email: tom.marshall@tn.gov

By: 
Jeffrey S. Henry
Tenn. B.P.R. #002420
Executive Director
211 Seventh Avenue North, Suite 320
Nashville, TN, 37219-1821
Phone: 615-741-5562
Fax: 615-741-5568
Email: jeffrey.henry@tn.gov

FELICIA CORBIN JOHNSON
JUDGE OF DIVISION I

JAMES F. RUSSELL
JUDGE OF DIVISION II

D'ARMY BAILEY
JUDGE OF DIVISION III

GINA C. HIGGINS
JUDGE OF DIVISION IV

RHYNETTE N. HURD
JUDGE OF DIVISION V

JERRY STOKES
JUDGE OF DIVISION VI

DONNA M. FIELDS
JUDGE OF DIVISION VII

ROBERT S. WEISS
JUDGE OF DIVISION VIII



2014 DEC 15 PM 2:58

THE CIRCUIT COURT OF TENNESSEE
FOR THE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
140 ADAMS AVENUE • ROOM 212
MEMPHIS, TENNESSEE 38103
(901) 222-3836 • FAX (901) 222-3819

APPELLATE COURT CLERK
NASHVILLE

ROBERT L. CHILDERS
JUDGE OF DIVISION IX

CHARLES O. MCPHERSON
RETIRED

ROBERT A. LANIER
RETIRED

GEORGE H. BROWN, JR.
RETIRED

KAY SPALDING ROBILIO
RETIRED

JOHN R. MCCARROLL, JR.
RETIRED

KAREN R. WILLIAMS
RETIRED

#ADM2014-02118

December 10, 2014

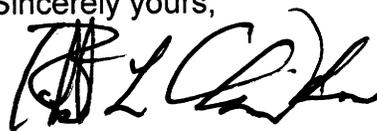
James Hivner, Clerk
Re: Rule 4(H)
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Dear Mr. Hivner:

I write to request the Tennessee Supreme Court not put forward the proposed amendments to Rule 4(H)(1) and (2). If a pleading or motion cites an unpublished opinion and the attorney has not attached a copy of the opinion, then I am required to stop reading the pleading, get on my computer, look up the case online, print a hard copy of the opinion, and then read the opinion. All of which takes additional time and slows down the decision-making process. If multiple unpublished opinions are cited, it adds to the time. Also, if I am not in my chambers, (on the bench or away from my office) I do not have access to a printer to print a hard copy of an unpublished appellate opinion. I suspect that this would also create a hardship on judges in multi-county judicial districts who do not have access to printers, when they are not in their home county.

I realize that the proposed amendment would still allow each Judicial District to require copies of unpublished opinions to be attached by local rule of court, however, my guess is that every Judicial District would adopt such a local rule for the reasons stated above. If that happens, I am not sure why there is a need at this juncture to change Rule 4(h). At some point in the future we may all become computer and internet savvy, and have the necessary hardware (printer's, etc) to be able to more readily access copies of unpublished opinions, but I do not believe we have reached that point yet. I respectfully suggest that it would be a much better use of judicial resources and time if the Rule continues to require attorneys to attach copies of unpublished opinions to their pleadings/motions. I strongly believe that changing Rule 4(H) at this point is premature and respectfully ask the Court to reconsider and not put forward the proposed amendment.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'R. L. Childers', written in a cursive style.

Robert L. Childers

RLC:

cc: Circuit Court Judges, 30th Judicial District
Chancellors, 30th Judicial District