

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

**Filed March 8, 2001**  
**ORDER**

The Rules of the Court of Appeals are amended by deleting all rules heretofore adopted in their entirety and substituting therefor the following Rules:

**RULES OF THE COURT OF APPEALS OF TENNESSEE**

Rule

1. Scope of the Rules.
2. Organization and Operation of the Court.
3. Record on Appeal.
4. Abridgement of the Transcript of Evidence, Including Depositions.
5. Preservation of Records.
6. Briefs.
7. Briefs in Domestic Relations Cases.
8. Copies of Papers Filed.
9. Disrespect of Courts.
10. Memorandum Opinions.
11. Publication of Opinions Where No Application for Permission to Appeal to the Tennessee Supreme Court Is Filed.
12. Citation of Unpublished Opinions.
13. Accelerated Civil Appeal.
14. Appeals from Juvenile Courts.

**Rule 1. Scope of the Rules.**

(a) The procedures of this Court are governed by Tennessee Code Annotated and by the Tennessee Rules of Appellate Procedure (hereinafter Tenn. R. App. P.). These court rules are designed only to govern certain aspects of practice of this Court and supersede all previous rules of this Court.

(b) For good cause, including the interest of expediting a decision upon any matter, this Court, or the panel assigned to hear a particular case, may suspend the requirements or provisions of any of these rules in a particular case on motion of a party, or on its own motion, and may order proceedings in accordance with its discretion.

## **Rule 2. Organization and Operation of the Court.**

(a) This Court shall be divided into three sections of four judges each. Unless otherwise designated by order of the presiding judge, the four judges residing in East Tennessee shall compose the Eastern Section, sitting in Knoxville; the four judges residing in Middle Tennessee shall compose the Middle Section, sitting in Nashville; and the four judges residing in West Tennessee shall compose the Western Section, sitting in Jackson.

(b) Unless otherwise ordered, all final judgments of this Court shall be remanded to the trial court for further proceedings, including collection of judgment and costs.

## **Rule 3. Record on Appeal.**

(a) The record on appeal shall be referred to as the record, which may be abbreviated "R". It shall be composed of volumes of not more than 150 pages each. All references to the record shall be by volume and page number.

(b) The record shall be captioned as in the trial court, except that the caption shall specify the position occupied by each party in the trial court and on appeal. For example, John Smith, plaintiff-appellant.

## **Rule 4. Abridgement of the Transcript of Evidence, Including Depositions.**

(a) In all cases where the transcript of evidence, including depositions, exceeds 300 pages, this Court may order counsel to abridge such transcript. Included in the abridgement shall be such testimony, objections, motions, rulings of the trial court, etc., as are deemed sufficient to convey a fair, accurate and complete account of what transpired with respect to those issues that are the basis of appeal. The abridged transcript shall identify the witness, the party for whom he or she is testifying, whether direct or cross examination, and shall include testimony that properly identifies the witness.

(b) If less than all the testimony, or other material, on any page is to be considered, the material not to be considered shall be deleted or appropriately marked to so indicate. There shall also be shown the exhibit number of each exhibit relied upon by the parties. Exhibits themselves are not to be included in the abridged transcript. The abridged transcript shall be properly indexed and the pages shall be properly numbered as in the original transcript.

(c) The appellant shall designate such portions of the transcript to be included in the abridged transcript, and such designation shall be served on appellee with appellant's brief. The appellee shall designate such other parts of the transcript to be included in the abridged transcript and such designation shall be served on appellant with appellee's brief. The designations are to be by page numbers and, if less than the complete page where testimony is to be included, designated by line numbers. The designations shall not be filed in the cause.

(d) The appellant shall file the complete abridged transcript, including any additional parts not previously designated by either party, at the time that a reply brief is filed. If no reply brief is filed, the appellant shall file the abridged transcript within the time allowed for filing a reply brief. Only one copy of the complete abridged transcript is to be filed with the court clerk.

(e) Nothing in this rule shall be construed to authorize any alteration of the original trial transcript, which shall be and remain a part of the record on appeal.

(f) The cost of the abridgement shall be governed by Tenn. R. App. P. 40.

#### **Rule 5. Preservation of Records.**

(a)(1) Except as provided in subsection (b) of this rule, after a record has been filed, it shall not be taken from the clerk's office except by counsel of record in the case, and only with the clerk's permission. Records may not be removed from the court archives by anyone for any purpose except on order of a judge of this Court for good cause shown.

(2) The clerk shall not permit any record to be taken from the clerk's office or the archives without taking a proper receipt therefor.

(b)(1) Unless otherwise ordered, the clerk of this Court is authorized to dispose of the records and other papers associated with the cases decided by this Court subject to the following conditions: (a) all records and other papers shall be maintained for at least six (6) months after the issuance of this court's mandate; (b) no record or other paper shall be disposed of until the clerk of the trial court and counsel of record for the parties or the parties themselves if they are proceeding pro se have been given at least thirty (30) days notice of the intended disposition; and (c) the manner of the intended disposition shall comply with the applicable statutes and rules governing the disposition of judicial records and exhibits.

(2) Any party receiving a notice of disposition in accordance with Section (b)(1) may object to the disposition of all or part of the records and other papers. Objections must be made in writing stating the basis for the objection and must be filed with the clerk of the Court within thirty (30) days following the date of the notice of disposition. If an objection is timely filed, the records and other papers shall not be disposed of without an order of this Court.

(3) If any panel of this Court determines that the record and other papers in a case to which it has been assigned has possible historical value, the panel may enter an order directing the clerk of the Court to transfer the record and other papers to the State Library and Archives for preservation or other disposition as the State Library and Archives deems appropriate.

## **Rule 6. Briefs.**

(a) Written argument in regard to each issue on appeal shall contain:

(1) A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record where the erroneous or corrective action is recorded.

(2) A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.

(3) A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.

(4) A statement of each determinative fact relied upon with citation to the record where evidence of each such fact may be found.

(b) No complaint of or reliance upon action by the trial court will be considered on appeal unless the argument contains a specific reference to the page or pages of the record where such action is recorded. No assertion of fact will be considered on appeal unless the argument contains a reference to the page or pages of the record where evidence of such fact is recorded.

(c) Where less than the full record is sufficient to convey a fair, accurate and complete account of the issues on appeal (as set out in Tenn. R. App. P. 24) and counsel for one of the parties desires to file a complete transcript of the proceeding in this Court, counsel may do so. However, this Court may require that party or counsel to bear the expense of the unnecessary part of the transcript and to furnish an appendix as provided in Tenn. R. App. P. 28.

(d) Extensions of time in excess of those provided for in Tenn. R. App. P. 29(a) will not be liberally granted by this Court. Any request for such extension shall be in the form of a written motion setting forth the reasons for the extension sought. Such motion shall be filed or presented to a member of this Court within the time initially allowed by Tenn. R. App. P. 29(a) for the doing of the act for which an extension is sought.

## **Rule 7. Briefs in Domestic Relations Cases.**

(a) In domestic relations appeals where the issues involve the amount or the disposition of the marital property, the appellant's brief shall contain in the statement of facts or in an appendix, an orderly tabulation of all marital property in a form substantially like the form attached hereto. All entries in the table as to value and to whom the property was awarded shall be accompanied by a citation to the record where the information may be found.

(b) If the appeal involves issues about the separate property of either party or the allocation of

the marital debts, the appellant's brief shall contain a separate table in the same form showing the pertinent information for that disputed issue.

(c) If the appellee disagrees with the appellant's tabulation, the appellee's brief shall contain a tabulation in the same form showing the appellee's version of the facts.

MARITAL PROPERTY	APPELLANT'S VALUE	APPELLEE'S VALUE	VALUE FOUND BY TRIAL COURT	PARTY TO WHOM PROP- ERTY AWARDED BY TRIAL COURT
1. (Description)	\$ (Citation to record)	\$ (Citation to record)	\$ (Citation to record)	Husband or Wife (Citation to record)

**Rule 8. Copies of Papers Filed.**

(a) Except as required by this rule or by another statute or rule, the original of all papers filed with the clerk of this Court shall be accompanied by one (1) copy of the original paper being filed.

(b) The original of all briefs filed with the clerk of this Court shall be accompanied by four (4) copies.

(c) The original of all applications for interlocutory appeals under Tenn. R. App. P. 9, extraordinary appeals under Tenn. R. App. P. 10, or motions for a stay or injunction pending appeal under Tenn. R. App. P. 7 shall be accompanied by one (1) copy.

**Rule 9. Disrespect of Courts.**

Any brief or written argument containing language showing disrespect or contempt for any court of Tennessee will be stricken from the files, and this Court will take such further action relative thereto as it may deem proper.

**Rule 10. Memorandum Opinion.**

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

**Rule 11. Publication of Opinions Where No Application for Permission to Appeal to the Tennessee Supreme Court Is Filed.**

(a) Opinions of this Court, including abridgements thereof, from which no application for permission to appeal to the Tennessee Supreme Court has been filed, shall be published only with the approval of this Court as provided for herein.

(b) An opinion of this Court from which no application for permission to appeal to the Tennessee Supreme Court has been filed shall be published only if, in the determination of the members of this Court, it meets one or more of the following criteria:

(1) The opinion establishes a new rule of law or alters or modifies an existing rule or applies an existing rule to a set of facts significantly different from those stated in other published opinions;

(2) The opinion involves a legal issue of continuing public interest;

(3) The opinion criticizes, with reasons given, an existing rule of law;

(4) The opinion resolves an apparent conflict of authority;

(5) The opinion updates, clarifies or distinguishes a principle of law; or

(6) The opinion makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(c)(1) An opinion of this Court, or an abridgement thereof, from which no application for permission to appeal to the Tennessee Supreme Court has been filed may be submitted to this Court for consideration for publication only after the expiration of the period of time permitted by the Tennessee Rules of Appellate Procedure to apply to the Tennessee Supreme Court for permission to appeal. Along with the opinion, the author shall state the reasons why the publication of the opinion is appropriate.

(2) If within thirty (30) days of the date an opinion has been submitted to all members of this Court, seven (7) members have approved publication of the opinion, the presiding judge shall notify the author of the opinion in writing that the opinion may be published.

(3) Approvals or objections to the publication of an opinion shall be made in writing and shall be sent to the presiding judge within thirty (30) days after the opinion has been submitted to the members of this Court. Where no written response is received from a member of this Court within thirty (30) days, the lack of response shall be treated as an affirmative vote for publication. The presiding judge shall, upon request, share the substance of the responses with the author of the opinion.

(d) Any judge of this Court may make minor editorial changes in an opinion authored by that

judge once the opinion has been filed. These changes may include corrections in spelling, punctuation, or syntax. However, any abridgement that significantly alters the sense or emphasis of an already filed opinion shall be submitted to this Court prior to publication.

(e) In cases wherein concurring or dissenting opinions have been filed, the author of the concurring or dissenting opinion shall determine whether the concurring or dissenting opinion should be published with the majority opinion or whether only the position of the concurring or dissenting judge should be noted.

**Rule 12. Citation of Unpublished Opinions.**

(a) No opinion of any court that has not been published shall be cited in papers filed in this Court unless a copy thereof has been furnished to this Court and to adversary counsel. Such unpublished opinions shall be included as appendices to any brief or other paper filed with this Court.

(b) In the case of unpublished Tennessee intermediate appellate court opinions, the title page of any opinion cited to this Court shall contain either a notation that no appeal to the Tennessee Supreme Court has been filed or a notation of the date and manner in which the Tennessee Supreme Court acted upon the application for permission to appeal. Where appropriate, this shall include a notation that an appeal has been applied for but has not been acted upon by the Tennessee Supreme Court.

**Rule 13. Accelerated Civil Appeal.**

Counsel for parties to an appeal may stipulate that the appeal may be heard and considered by this Court as follows.

IN THE COURT OF APPEALS OF TENNESSEE

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## STIPULATION FOR ACCELERATED CIVIL APPEAL

The undersigned counsel for the parties stipulate that this appeal may be heard and considered by the Court of Appeals as follows:

1. Procedures. Appeal procedures shall be followed according to applicable statutes and the Tennessee Rules of Appellate Procedure and the Rules of Civil Procedure, except as they may conflict with these stipulated procedures. No changes may be made to this form.
2. At Issue. These appeal procedures are no different than any other civil appeal until the briefs have been filed and the case is at issue.
3. Priority for Oral Argument. Oral argument, if requested, will be accelerated and set within 60 days after the case is at issue or 60 days after this stipulation is filed, whichever is later.

Check One:

\_\_\_\_\_ Oral argument is requested.

\_\_\_\_\_ Oral argument is not requested.

4. Oral Argument. Each party is entitled to oral argument as in any other civil appeal.
5. Oral Decision by Court. After arguments are presented, the court will take a short recess and confer. An oral decision will be made from the bench when the court reconvenes. Reasons for the decision will be stated by the court. If the court finds it is unable to rule without further deliberation, an oral decision will not be made, and the court will enter its written order as provided in paragraph 7.
6. No Written Opinion. A written decision in the form of a published opinion or unpublished memorandum is waived by the parties.
7. Written Order. The decision of the court will be incorporated in a written order following argument.
8. Review by Tennessee Supreme Court Waived. The Court of Appeals will consider a motion for rehearing as in any other civil appeal following the entry of the written order deciding the case. Review by the Tennessee Supreme Court is waived.
9. Suspension of Rules. The filing of this stipulation for an accelerated appeal shall be deemed to be a motion to suspend any of the rules under Tenn. R. App. P. 2, which may be in conflict with these procedures.



At any time subsequent to the filing of this stipulation, either before or after oral argument, the court on its own motion may enter an order removing this case from the Accelerated Hearing Calendar and placing it on the Regular Calendar for disposition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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IN THE COURT OF APPEALS OF TENNESSEE

AT \_\_\_\_\_

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ORDER ON STIPULATION FOR ACCELERATED CIVIL APPEAL

IT IS ORDERED that this case be placed upon the Accelerated Hearing Calendar for disposition in accordance with the stipulation of the parties.

ENTER: This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE

**Rule 14. Appeals from Juvenile Courts.**

The clerk of this Court shall place under seal, subject to more specific order, all records and briefs filed in appeals from juvenile courts, except for those types of cases listed in Tenn. Code Ann. § 37-1-154(b) as subject to public disclosure.

These Rules were adopted March 5, 2001, and shall be effective on April 2, 2001.

IT IS SO ORDERED.

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Houston M. Goddard  
Presiding Judge

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Ben H. Cantrell  
Presiding Judge,  
Middle Section

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W. Frank Crawford  
Presiding Judge,  
Western Section

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Herschel P. Franks

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William C. Koch, Jr.

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Alan E. Highers

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Charles D. Susano Jr.

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William B. Cain

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David R. Farmer

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D. Michael Swiney

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Patricia J. Cottrell

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Holly K. Lillard