From: "Rhonda R. Williamson" <jrwilliamson@blomand.net>
To: <lisa.marsh@tncourts.gov>
Date: 05/17/2013 12:58 PM
Subject: TN Courts: Submit Comment on Proposed Rules

Submitted on Friday, May 17, 2013 - 12:58pm
Submitted by anonymous user: [165.166.129.219]
Submitted values are:

Your Name: Rhonda R. Williamson
Your Address: 4145 Bybee Branch Road, McMinnville, TN 37110
Your email address: jrwilliamson@blomand.net
Your Position or Organization: Designated Court Reporter for the 31st Judicial District
Rule Change: Supreme Court Rule 26
Docket number: M2013-01132-SC-RL2-RL
Your public comments: By allowing electronic recordings to be used as the official transcript on appeal, that takes away the majority of my job and my income. I do not believe that judges, lawyers, public defenders, district attorneys nor their clients will benefit from listening to recordings when they can have a printed copy in front of them or even have the transcript on their computer. Please do not change this Rule. The economy is bad enough without taking away more jobs and that is exactly what you are doing to all the criminal court reporters.

The results of this submission may be viewed at:
http://www.tncourts.gov/node/602760/submission/5850

FILED
MAY 22 2013
Clerk of the Courts

CIRCUIT COURT

STATE OF TENNESSEE

TWENTY-SIXTH JUDICIAL DISTRICT

NATHAN B. PRIDE
CIRCUIT JUDGE
DIVISION III

LASHONDA PATTERSON
ADMINISTRATIVE ASSISTANT

MADISON COUNTY CRIMINAL JUSTICE COMPLEX
515 SOUTH LIBERTY STREET, SUITE 320
JACKSON, TENNESSEE 38301
(731) 988-3040
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May 17, 2013

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

RE: M2013-01132-SC-RL2-RL - CD-Rom

Mr. Catalano:

I would like to express my dismay and disapproval of the potential use by all Courts of electronic recording of trial court proceedings under Rule 26. It appears as if it may be the long-term intent to use the CD-Rom recorded Court proceeding in lieu of the actual Court Reporter that is now in place in most districts including the 26th District, where I serve as Circuit Court Judge of Division III.

The use of such devices cannot replace, by any means, the hands-on ability of an actual reporter to adjust, correct, read back or assist with the ongoing trials on a long-term or regular basis.

Further, the use of Section 2.05 exhibit list in actual trials, would be burdensome, take away from the Judge's ability to pay close attention to the remaining proceedings of the Court and would undoubtedly be an additional administrative duty, which when the CD-Rom fails or has problems, would assume to be the responsibility of Trial Judges to correct, monitor or explain why the same was not or did not act accordingly.

Thusly, for the aforesaid reasons, and the fact that use of CD-Rom equipment to record court proceedings would undoubtedly add to the confusion, complexity and in some cases, unnecessary delay of both regular proceedings and appellate proceedings.

Therefore, I would recommend that the Supreme Court not expand the use of such CD-Rom to record court proceedings beyond the Sixth Circuit Court for the 20th Judicial District. I thank you in advance for your attention and if there is anything else needed to express my opposition to the same, please let me know at once.

Sincerely,

NATHAN B. PRIDE
Circuit Court Judge - Division III

JERRY GONZALEZ, PLC

Attorney

Mailing address:

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June 5, 2013

JUN 10 2013

Mike Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Ave. North
Nashville TN 37219-1407

Re: Proposed Amendment to Tenn. Sup. Ct. R. 26
Docket No. M2013-01132-SC-RL2-RL

Dear Mr. Catalano:

I write to express my view on the proposed amendment to Rule 26 of the Tennessee Supreme Court.

As an attorney who regularly practices in both state and federal courts in Tennessee, I have often lamented the snail's pace with which Tennessee courts have transitioned, or thought of transitioning, to electronic case filing and use of other electronic technology. I continue to be amazed as I enter state courts and find, in some cases, court reporters in a criminal court who still record proceedings in handwriting on paper stenographic notebooks. Why such an archaic form of court reporting is still allowed is a complete mystery to me. In other courts, for example Davidson County Criminal Courts, a machine shorthand court reporter may be present with courtroom camera equipment as "back up". But I have noticed that for much of the proceeding the court reporter is not typing on the steno machine. I have come to find out later that the court reporter is merely transcribing the proceeding from the video or audio recording that was supposed to be merely for backup. The use of the machine shorthand machine is merely a ruse to make it look like the transcription is a simultaneous and verbatim recording. Of course, this begs the question: If the court reporter is going to transcribe the proceeding from the video recording anyway, what is the purpose behind requiring a court reporter to be present and pretend to type on the shorthand machine?

In the civil cases I do, I record absolutely every deposition by use of a digital video camera. I then have the audio transcribed and synchronized with the video and then I can snip the appropriate parts of the deposition video to play at trial with the typewritten testimony scrolling at the bottom of the screen. This is far and away more effective for keeping the judge's and jury's attention than the traditional method of having someone sit in the witness box and read answers from a paper transcript while the lawyer reads the questions from the podium.

With this background, I make the following comments with reference to the specific sections of the proposed rule.

1.01 I encourage the Supreme Court to allow all Tennessee courts to implement electronic recordings in lieu of a court reporter, not just those authorized by the Court. When you consider the annual cost of an official court reporter (salary, benefits, etc.), an electronic recording system easily pays for itself in a very short amount of time. There is absolutely no logical justification for designating only a handful of courts. Additionally, I encourage the rule to specifically allow any attorney who is willing to pay for the cost to video record any court proceeding and allow the same to be certified as a true copy in lieu of an official record, just as is done in depositions.

2.04 The suggested cost of $50 per disc or other media format is excessive. If an attorney provides the clerk with a 64 GB flash drive to burn a video of a trial, it costs the court nothing to do so. In fact, inserting the flash drive into the system and locating and designating the digital file to burn should take no more than 20 minutes. Why should the fee be $50 for such a simple task? (By the way, only a very small digital video file or one that has been compressed (and therefore with reduced resolution) will fit on a DVD. I predict that DVD's will go the way of the 8 track cassette very soon. The current trend is to online transfers via websites such as dropbox.) This fee will only serve as a disincentive to get copies of the video. Likewise, there is no reason to raise the charge to $100 for duplicate copies. The cost should be limited to actual cost, nothing more.

2.06 This rule should be modified to explicitly allow the use of video depositions at trial. If the rule leaves it to the judge's discretion, many judges who are unfamiliar and uncomfortable with technology may forbid its use for no other reason than their personal discomfort with new technology.

4.01 With digital video recordings, it is very difficult to include a date/time stamp on the digital file itself. The only way to do this is to have the file played from the digital camera onto a monitor and then record the video from the monitor. If the file is directly transferred from the digital camera to a computer and saved as an .mpg file, it will not contain the date/time stamp. Similarly, the digital file will not contain a time stamp that shows "pm" or "am" but rather a running clock starting at zero (e.g., 00:00:00).

I encourage the Court to continue to push for use of technology in the courtroom and specifically to the eventual (and long overdue) implementation of electronic case filing similar to that implemented in the federal court system. The current paper based system in Tennessee courts is archaic, dysfunctional, and extremely unproductive and costly. Similarly, the use of courtroom video recording equipment and the use of such to create an electronic and official record of proceedings in lieu of an official machine-shorthand court reporter will move Tennessee courts into the 21st century.

Sincerely,

Jerry Gonzalez

J. Terry Holland
HOLLAND LAW OFFICES
Attorney at Law
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Telephone: (865) 692-1144
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June 10, 2013

RECEIVED
JUN 12 2013
Clerk of the Courts
Rec'd By _____

Mike Catalano, Clerk
Re: Tenn. S up. Ct. R. 26
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219-1407

Re: No. M2013–1132-SC-RL2-RL

Dear Mr Catalano,

I have recently discovered the Supreme Court Order filed May 13, 2013 involving Rule 26 of the Tennessee Supreme Court Rules. I am concerned about the proposed use of official electronic recording of the Court proceedings here in Knox County and surrounding vicinity. Candidly, my concerns are far too many to list in this letter. They truly revolve to some extent around the actual method of doing what is being proposed but, at least, some involve costs as well. Let me explain.

1. Costs

With regard to costs, I represent a varied clientele in the general practice of civil trials as well as civil office practice here in Knoxville. From time to time, I go to the outer county region including the seven or eight counties surrounding Knox County with more emphasis in Anderson, Loudon and Blount than the counties east of Knoxville, primarily because my office is located in West Knoxville.

Servicing this group of people might appear to involve the wealthier sections of Knoxville and the surrounding communities. Would that that were so. I note that each year, the Board wishes us to give an estimate of pro bono work that we do both individually and for non-profits and things of that nature. While I do not document that as I would for someone that was actually paying me on an hourly basis, I have usually dedicated at least fifty hours and often times a whole lot more. At least a part of this is that I refuse to charge to any Church for anything that I do, thinking that that is simply one of the objects of this profession. Churches do great good in the community and due to economic crises that we now face, are certainly more reliable than governmental usages as well.

From time to time, in representing a pro bono clientele that do not have the

money to pay for our services, we nonetheless find it necessary to involve court reporters and transcripts. I find it interesting that the proposal is to charge Fifty Dollars for the first disk and One Hundred Dollars for that same disk copied a second time. I don't understand the break-down or why it needs to be that way. Admittedly, it could be because I do not understand the way this is being done but it seems to me that in the current realm, a copy of an official record is usually about a third of the costs and now it is going to be two hundred percent of the original cost. That seems odd to me but undoubtedly there is a reason. I don't find the reason in my review of what has been transmitted to me, which essentially is supposed to be all of the official record.

2. Procedure:

It seems to me that the procedure is going to require every lawyer to maintain video taping and review equipment. While I certainly have that, I am not sure my counter in foot usage or whatever is going to work. Obviously, a date/time generation is what you are asking for but that may be more difficult to use. I might add that I have significant experience using video depositions and so forth including depositions taken in other Countries such as England and Nova Scotia. That was just the most recent case in which we have done work in that regard utilizing video taping both here and abroad. Maybe it is just me but it seems easier to have printed copies of transcipts.

3. Use of Transcripts:

It looks to me like the Court may well order transcripts themselves to keep from having to observe significant portions of a trial to get the full import of what is being said in Appellate recitation of testimony. That would seem to increase the costs in addition to what we already have which likewise appears to be cost intensive particularly for the copies.

4. Local Rules

Just as an observation from a lawyer who was licensed in 1974 and has practiced continuously since that time, I would make two observations concerning Local Rules. Often times we have rules in local jurisdictions which don't simply augment or expand on the State Ordered Rules of Procedure but often change the full scope of the rules. Just one example, I think, needs to be uttered in this regard. A number of jurisdictions surrounding Knox County <u>require</u> disclosure of what lay witnesses are going to say. Court of Appeals decisions back in the mid '80's indicated that while an identification of a lay witness with knowledge is demanded, if asked, and must be provided, you are not required to say what that witness may know. This has been modified by Local Rules in a number of counties where you are required to state exactly what they know, which discloses trial preparation and work product of one side to the other. I certainly understand the rationale utilized by the Judges who do this. They want no trials by ambush. On the other hand, while one lawyer goes out and works

hard on his case and does the discovery requested required, and investigation leading to that discovery, the other lawyer may simply send a Interrogatory and demand everything that lawyer "A" has investigated. This puts the premium on doing it last, not doing it first, so as to reduce fees and compensation as well as expenses to the client. Interestingly enough, that is usually used by the insurance company not the Plaintiff who, in most cases, is the one who has already suffered significant loss for which they are now in litigation.

Based on all of the above, it appears to me that if we are going to allow Local Rules to augment and expand this, the next thing we know, we may have some jurisdictions which the costs is incredibly higher than other jurisdictions just for doing this.

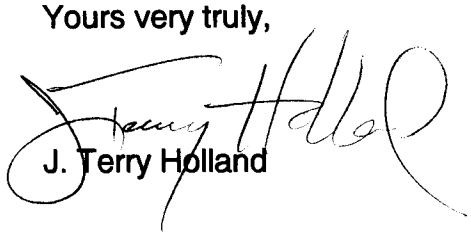
One more for instance is although there are going to be two recordations certified by the Clerk, mistakes such as equipment failures occur all the time and there is no actual stated provision for a monitoring of both systems while the trial is ongoing or any Motion hearings that may be handled in this same manner. What if the equipment does not work? If there is monitoring required or that could be required by a Judge with Local Rules implementation, that's not all bad but at the same time, there is the same cost factors of a current live court reporter certified to do so.

My issues with this go much further. Currently, we have an operation with some State supervision, court reporters who are certified as official reporters. We have some problems there in that out of state and out of country agencies want to horn in on the official reporting organizations but those problems can easily be dealt with if the Legislature is of a mind to do so. On the other hand, what are we going to do if the monitor of the recording system itself is not specifically certified and if so, we are just adding another layer where a mistake or mistakes could be made. I, for one, like a lot of lawyers from time to time, try to talk over the other lawyer or a witness particularly when the witness is not being responsive. A court reporter sitting there can raise her hand and say "stop, I can only get one of you at a time". I don't think that works so well with my experience with video recording with the best video taping and recording organization in East Tennessee whom I always use. What we get into with this new thing may change Appellate work and not for the best.

In conclusion, I believe the Supreme Court needs a great deal more investigation and questions answered such as the ones set forth above and others that I and others may have <u>before</u> this is voted on to implement same. I might further add, that while I get the Advance Sheets and have Westlaw, I have not seen this material until late last week in conversation with another individual in the Judicial system who was aware of same. The publication of this has not been the best in the world in my opinion.

With kindest personal regards, I remain

Yours very truly,



J. Terry Holland

JTH/lmh
Rule 26 letter to Court

M2013-1132-SCRL2-RL

RECEIVED
JUN 12 2013
By

State Court Clerks Association of Tennessee

MEMORANDUM

TO: Mike Catalano, Clerk, Tennessee Appellate Courts

FROM: Fred Chaney, President, Tennessee State Court Clerks Association 7c by JWest

DATE: June 12, 2013

RE: Proposed revision of Rule 26, Rules of the Tennessee Supreme Court

On behalf of the Tennessee State Court Clerks Association, I submit the following comment regarding the proposed amendment to Rule 26, Rules of the Tennessee Supreme Court.

As written, the proposed amendment to Rule 26 applies to all courts of record in Tennessee, both criminal and civil. To avoid confusion regarding the application of the rule, Section 1, 1.01 should clearly state that this rule applies only to the Sixth Circuit Court for the Twentieth Judicial District. Expansion of the application of Rule 26 to additional courts of record would then be introduced as a proposed amendment and be published for written comment.

226 Capitol Boulevard, Suite 210 Nashville, TN 37219 Phone: (615) 253-6700
Fax: (615) 253-4840 Email: coat.west@bellsouth.net Website: www.coatn.org

m2013-01132-SC-RL2-RL

RECEIVED
JUN 12 2013
Clerk of the Courts
Rec'd By

Rule 26 Proposed Changes

Mr. Michael Catalano, Clerk
Re: Tenn. Sup. Ct.R. 26

Mr. Catalano:

As per the proposed changes to Rule 26, the Tennessee Court Reporters Association (TCRA) would like to submit the following comments to be considered by the Supreme Court of Tennessee:

1. We have no objection to the 20th Judicial Circuit (Judge Brothers) continuing to use videotape as his official record in his Courtroom.
2. We would like to highlight some issues that may help clarify the need, or lack thereof, of videography being the main recordkeeping devices for a Courtroom.

   In Tennessee in the Civil Courts, there is no expense to the Court for the hiring of court reporters. Both parties share in the per diem of the reporter, as it always has been. The parties involved have brought the suit and it only seems fair that they should have to pay – not the Court system itself. Why would any Court want to spend money on something that is already paid for by the parties involved?
   As keeper of the record, court reporters have always been tasked with marking exhibits, keeping the order of the witnesses and, most importantly, making a record so as to inserting the human element when necessary, so that there is ALWAYS a clear, concise and absolutely correct record for any and all purposes.
   While we certainly understand and appreciate all that goes into revising a Rule already on the books, as professionals who have been Keepers of the Record since the first scribe centuries ago, we'd hope that you'd consider the fact that a change like this could eventually cost the Court and, most importantly, the taxpayers of the State of Tennessee, tens of thousands if not hundreds of thousands of dollars in fees that at this time are paid for by the litigants, without one tax dollar or Court dollar being spent. Why pay for something that is already provided to the Courts at no cost?

   Thank you for you kind attention to this matter. Should you have any questions, we'd be delighted to answer them. Also attached, please find suggestions from an official reporter who asked to be heard and considered.

James P. Beres, LCR, CLR, RMR
President, Tennessee Court Reporters Association

M2013-01132-SC-RL2-RL

RECEIVED
JUN 12 2013
Clerk of the Courts
Rec'd By _____

To Whom It May Concern:

I just have a few comments I would like to share with you. You can use this information or not, as you wish.

- I am an official in the 25th Judicial District. My judge handles both criminal and civil cases. The officials received the following memo from Connie Turner, the Coordinator of Court Reporting Services at the AOC on 5/21/13

Hello everyone,
I've been informed that a letter or other information is circulating regarding the proposed amendment to Rule 26. This is to advise you that the proposed changes to this Rule will apply only to the 6th circuit court of the 20th judicial district. The changes will have no impact on court reporters working in criminal or any other circuit courts.

Connie D. Turner
Paralegal/Coord. of Crt. Reporting Svs.
TN Supreme Court
Administrative Office of the Courts
511 Union Street, Suite 600
Nashville, TN 37219
(615) 741-2687, Ext. 1260

However, if you will note on page 2, line 27 of Appendix A, the example used is of criminal motions.

- On page 3, line 70, in reference to depositions, I asked Judge Walker if this referred to a deposition that was read in court or the actual deposition that was filed with the court, and he said that it was unclear. Is this an opening to admit electronic depositions without a written transcript?

- When discussing the impact of this rule change with the clerks, they indicate it would have significant impact on their budget if they are required to have a clerk in the courtroom during all proceedings to monitor the recording, as well as maintaining, retrieving, copying, and handling inquiries that are now handled by court reporters.

- The public defenders face another situation if this rule is applied to criminal courts. A lot of times appeals are contracted out or for some other reason not handled by the attorney who tried the

case. This would mean that an appellate attorney would have to listen to the entire recording of the trial, rather than review it from a typed, indexed transcript. In the event that a written transcript of any portion was required, the public defender's staff would probably be making that transcript from the recording.

- The recordings themselves would most likely contain privileged communications between attorneys and clients that are picked up by the recording equipment.

- Viewing electronic recordings for appellate records would put the appellate court in the position of judging the credibility of the witnesses, which is, according to our law, the sole province of the jury.

- If this rule only pertains to one court and there are truly no plans to expand the application of the rule to other courts, could it be specified in the rule that it only applies to that court?

These are just some thoughts that I wanted to pass along for your use if you feel they would be helpful to you. Sorry it is at the last minute.

Lynn

Lynn S. Terrell
Official Court Reporter
25th Judicial District
P.O. Box 135
Brunswick, TN 38014
(901) 388-8151

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: AMENDMENT TO RULE 26, RULES OF THE TENNESSEE SUPREME COURT

FILED
JUN 12 2013
Clerk of the Appellate Court
DROP BOX

No. M2013-01132-SC-RL2-RL

RESPONSE TO INVITATION FOR PUBLIC COMMENT

In response to the Court's invitation for public comment concerning the proposed change to Tennessee Supreme Court Rule 26, the Executive Committee of the Tennessee District Public Defenders Conference ("the committee") recommends the court consider present and future advances in technology which affect the definitions of electronic storage. In addition, the committee wishes to reaffirm the importance of court reporters as "guardians of the record," especially in criminal cases.

TECHNOLOGY ISSUES

The committee is supportive of the Court's intent to update the rules to meet the ever-expanding developments in electronic media storage. Along these lines, the committee suggests that the Court also consider the current status of the most recent technological advances. While CDs and DVDs are still a viable option for the recording of proceedings, technology has already

begun to embrace more portable, smaller formats for the electronic storage of data. USB flash drives and secure digital cards are a few examples of the current trend in electronic media storage. Not only are these formats smaller, they are faster and can hold more data than the standard CD or DVD.

Several computer manufacturers have eliminated the CD/DVD drive from their laptop computers (Apple and Google to name a few) due to the trend to move away from CD/DVD technology. And, many of today's video and audio recording devices record directly to secure digital cards, bypassing the use of CDs or DVDs in the recording process.

By addressing the developing forms of electronic storage, the Court may avoid frequent updates to Rule 26 in the near future. Should the Court later opt to expand the scope of electronically recording court proceedings, addressing developing advancements in technology will further serve the Court's, and legal profession's interests.

In recognition of the Court's present intention to maintain proceedings on CD/DVD, it could be possible to produce duplicates of the official record on the other formats previously discussed. This has the benefit of saving costs, additional flexibility, and addressing potential issues created by newer computers lacking CD/DVD drives.

At the same time, the committee acknowledges the use of smaller, more mobile, formats of electronic storage poses practical difficulties for use as originals. Proposed Section 2.03, requiring that the clerk make notations on the discs concerning the judicial district in which the proceeding occurred, sequential numbering of the discs, the caption, case file number, and date of proceeding will be impossible if the digital format on which the proceeding is recorded is a flash (or thumb) drive.

To address these concerns, the committee proposes that official recordings, and certified copies of official recordings, could be made pursuant to the proposed language in 2.01 (videotape, CD-ROM, DVD, or similar electronic recording format), thereby establishing a tangible, easier to locate "record". The committee reiterates that the newer formats could be useful for additional duplicates of electronic court proceedings. By addressing these issues and the current ambiguity in "similar electronic storage format", Rule 26 would further serve to define and clarify the other storage formats acceptable to the Court.

The committee further suggests that addressing the issue of developing formats will serve to provide guidance on how parties or clerks are to comply with section 2.03 when proceedings are recorded onto a format which is too small.

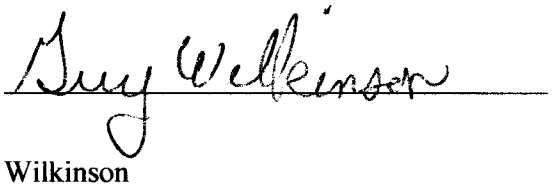
COURT REPORTERS

The committee acknowledges that the issue of court reporters is not directly addressed in the Court's order, and currently Rule 26 is only applicable to the Sixth Circuit Court for the Twentieth Judicial District. However, the committee suggests that prior to any future expansion of the rule's application; the Court should affirm the importance of retaining court reporters. This is especially critical in criminal cases where Constitutional rights are litigated. There are many disadvantages when the record does not contain the written transcript of a court reporter. The proper identification of exhibits, the determination of the speaker, and the proper citation of legal records are complicated and made difficult in review of the record. Often, a meaningful review, interpretation of the record, and preservation of the record itself would not be possible without the assistance of this indispensable human element. Without court reporters, the workloads of appellate attorneys as well as the appellate courts would be dramatically increased.

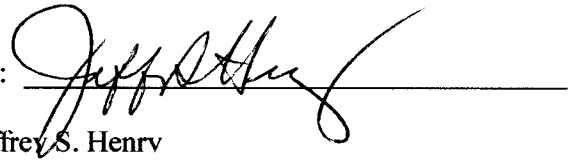
CONCLUSION

The Executive Committee of the District Public Defenders Conference appreciates the intent to modernize this and other rules. The committee files these comments as suggestions for clarifying, expanding, and enhancing the use of modern electronic media. The committee also wishes to affirm the importance of court reporters that serve as the "guardians of the record" and assist all components of the criminal justice system, ensuring a meaningful appellate review.

Respectfully submitted,
Executive Committee of the Tennessee District Public Defenders Conference

By: 

Guy Wilkinson
Tenn. B.P.R. #005845
President
211 Seventh Avenue North, Suite 320
Nashville, TN. 37219-1821
Phone: 615-741-5562
Fax: 615-741-5568
Email: guy.wilkinson@tn.gov

By: 

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