

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

12/21/2022

Clerk of the
Appellate Courts

**IN RE: ADOPTION OF RULE 54 OF THE TENNESSEE SUPREME
COURT FOR SPECIAL THREE-JUDGE PANELS**

No. ADM2021-00663

ORDER

On May 5, 2021, the General Assembly passed and on May 26, 2021, the Governor signed an act to amend Tennessee Code Annotated, Title 20, effective July 1, 2021, to add a new chapter providing for special three-judge panels and authorizing the Supreme Court to promulgate rules governing the practice and procedure of those panels. See 2021 Tenn. Pub. Acts, ch. 566 (H.B. 1130). On June 15, 2021, the Court amended the Rules of the Supreme Court of Tennessee by adding Rule 54, Interim Rule for Special Three-Judge Panels, effective July 1, 2021. On September 2, 2021, the Court adopted amendments to Interim Rule 54, Rules of the Tennessee Supreme Court, effective upon the filing of the Order.

Effective immediately upon the filing of this Order, the Court hereby adopts Rule 54, Rules of the Tennessee Supreme Court, as set out in the Appendix to this Order.

The Clerk shall provide a copy of this Order and the Appendix to LexisNexis and to Thomson Reuters. In addition, this Order and the Appendix shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

TENN. SUP. CT. R. 54

FOR SPECIAL THREE-JUDGE PANELS

RULE 54: RULE FOR SPECIAL THREE-JUDGE PANELS

Section 1. Applicability.

This rule applies to civil actions filed in a trial court in this state in which the state, a department or agency of the state, or a state official acting in his or her official capacity is a defendant in a complaint that:

- (a) challenges the constitutionality of a state statute, including a statute that apportions or redistricts state legislative or congressional districts; or an executive order; or an administrative rule or regulation; and
- (b) includes a claim for declaratory judgment or injunctive relief.

COMMENT: This rule applies to amended complaints, counter-claims, and third-party complaints as well as complaints.

Section 2. Procedure for Initiating the Empaneling of a Special Three-Judge Trial Court.

(a) The person or entity filing the complaint, amended complaint, counter-claim, or third-party complaint shall immediately thereafter file a notice that the action satisfies the criteria for a three-judge panel described in Section 1.

(b) The notice must:

- (1) list all parties and, if available, counsel and complete contact information for counsel, including email addresses;
- (2) state the cause number and style of the case, the trial court in which it is pending, and, if available, the name of the judge to whom it is assigned;
- (3) summarize the dispute, describe the constitutional claims asserted against the state or a state official, department, or agency, and summarize the declaratory or injunctive relief sought; and
- (4) attach a copy of the complaint, amended complaint, counter-claim, or third-party complaint.

(c) Service of the notice shall comply with Rule 5 of the Tennessee Rules of Civil Procedure applicable to service of the pleading with which the notice is filed.

(d) The clerk of the trial court in which the action and notice are filed shall expeditiously forward the notice to the presiding judge of the judicial district. The presiding judge has discretion to permit or direct any party to the action to file a response to the notice.

(e) If a plaintiff does not file a notice, a defendant as defined in Section 1 may request the

empanelling of a special three-judge panel by providing notice consistent with the provisions of this rule within fifteen (15) days of the date of service of the complaint, amended complaint, counter-claim, or third-party complaint. Multiple notices need not be filed in a single action.

(f) The filing of a notice under this rule stays all proceedings in the trial court until the Supreme Court determines whether to appoint a three-judge panel as provided in Section 3.

Section 3. Action on Notice; Composition of the Special Three-Judge Panel Trial Court.

(a) Within fifteen (15) days of the filing of the notice, the presiding judge of the judicial district in which the notice was filed shall file with the clerk of the trial court where the action is pending an order making a written initial determination as to whether the action filed qualifies under the provisions of Section 1 requiring the empanelling of a special three-judge panel. Within five (5) days of the filing of the presiding judge's order, the trial court clerk shall email to the Clerk of the Supreme Court addressed to appellatecourtclerk@tncourts.gov the following documents:

(1) the presiding judge's order;

(2) the notice referenced in Section 2(b) (along with any attachments thereto); and

(3) any responses to the notice referenced in Section 2(d) filed by a party to the litigation.

(4) Upon receipt of the email, the Clerk of the Supreme Court shall file the transmitted documents in the Supreme Court. The Supreme Court has discretion to request additional information from the parties to aid its de novo review of the presiding judge's determination.

(5) The Supreme Court makes the final determination as to whether the action qualifies under the provisions of Section 1. If the Supreme Court determines that it does not, the Court shall remand the case to the original trial judge to whom the case was assigned. If the Supreme Court determines that it does, the Court shall then select two (2) trial judges of courts of record to sit with the judge to whom the case was originally assigned as a three-judge panel to hear and decide the case.

(b) The special three-judge panel will be composed of:

(1) the trial judge of the judicial district to which the case was originally assigned;
and

(2) one trial judge from each grand division of the state other than the grand division in which the action was originally filed.

(c) The Supreme Court shall appoint one of the three judges to serve as the chief judge of the special three-judge panel.

(d) Should any member of the three-judge panel be disqualified or otherwise unable to serve on the panel, the Supreme Court shall appoint as a replacement another trial court judge from the same grand division as the judge being replaced, who shall serve by interchange, as provided in Rules 10B and 11 of the Tennessee Supreme Court Rules.

Section 4. Location of Special Three-Judge Panel; Governing Rules.

(a) The courtroom of the trial judge to whom the case was originally assigned or another appropriate courtroom in the judicial district shall serve as the location for any in-person hearings before the special three-judge panel, unless otherwise directed by the Supreme Court.

(b) The use of technology, including telephone, teleconferencing, email, video conferencing or other means that do not involve in-person contact shall be permitted and is encouraged.

(c) Except as provided by this rule, the Tennessee Rules of Civil Procedure, Rules of Evidence, and Rules of Appellate Procedure and all other statutes and rules applicable to civil litigation in a trial court in this state apply to proceedings before a special three-judge panel.

Section 5. Actions by Judges Serving on a Special Three-Judge Panel.

(a) In the event of any disagreement on any matter before the special three-judge panel, the decision of the majority of the panel will prevail.

(b) A single judge of a special three-judge panel may not independently order a temporary restraining order, temporary injunction, or an order that finally disposes of a claim before the court.

Section 6. Appeals.

(a) Except as provided in subsection (b), the Court of Appeals shall have jurisdiction of appeals from the decisions of a special three-judge panel appointed pursuant to Tennessee Code Annotated § 20-18-101, et seq., and this rule. Notice of appeal shall be filed with the Court of Appeals in compliance with the Tennessee Rules of Appellate Procedure.

(b) In cases involving a constitutional challenge to a redistricting or apportionment plan enacted by the general assembly, an appeal by any party is to the Supreme Court within thirty (30) days from the entry of the judgment of the special three-judge panel.

Section 7. Dissolution; Panel Held in Abeyance.

(a) Upon the entry of a final, appealable order, the panel shall be held in abeyance.

(b) If at any time the case assigned to the panel no longer meets the criteria described in Section 1, the chief judge may enter an order holding the panel in abeyance and re-assigning the case to the trial judge to whom the case was originally assigned. The trial judge shall then hear and

determine the rest of the case.

(c) A panel held in abeyance pursuant to this section shall remain in abeyance until either:

(1) All appeal rights have been exhausted, at which point the panel shall dissolve;
or

(2) The case is remanded on appeal to the trial court, at which point any remaining causes of action shall be heard and determined by the panel or the trial judge to whom the case was originally assigned, as appropriate. If the case is returned to the original trial judge, the chief judge shall order the panel dissolved.

COMMENT: Examples of when a case “no longer meets the criteria” needed for a three-judge panel include but are not limited to cases where the claim challenging the constitutionality of the statute, executive order, or administrative rule or regulation is dismissed upon a defendant’s dispositive motion, or when a complaint is amended to no longer seek declaratory or injunctive relief.