IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF APPELLATE PROCEDURE

No. M2011-01820-SC-RL2-RL - Filed: January 13, 2012

ORDER

The Court adopts the attached amendments effective July 1, 2012, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 3	APPEAL AS OF RIGHT; METHOD OF INITIATION
RULE 5	APPEAL AS OF RIGHT: SERVICE OF NOTICE OF APPEAL; DOCKETING OF THE APPEAL
RULE 9	INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT
RULE 10	EXTRAORDINARY APPEAL BY PERMISSION ON ORIGINAL APPLICATION TO THE APPELLATE COURT
RULE 11	APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT
RULE 22	MOTIONS
RULE 24	CONTENT AND PREPARATION OF THE RECORD
RULE 30	FORM OF BRIEFS AND OTHER PAPERS.

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

IT IS SO ORDERED.

PER CURIAM

KOCH, J., dissenting as to amendment of Rule 11

APPENDIX

2012 AMENDMENTS TO THE TENNESSEE RULES OF APPELLATE PROCEDURE

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

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 3

APPEAL AS OF RIGHT; METHOD OF INITIATION

[Amend Rule 3(b) and (c) as indicated below; paragraphs (a) and (d) - (g) are unchanged:]

(a) * * * *

(b) Availability of Appeal as of Right by Defendant in Criminal Actions. – In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)~~(i) or (iv)~~(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, an order or judgment entered pursuant to Rule 36, Tennessee Rules of Criminal Procedure, and from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.

(c) Availability of Appeal as of Right by the State in Criminal Actions. – In criminal actions an appeal as of right by the state lies only from an order or judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) the substantive effect of which results in dismissing an indictment, information, or complaint; (2) setting aside a verdict

of guilty and entering a judgment of acquittal; (3) arresting judgment; (4) granting or refusing to revoke probation; or (5) remanding a child to the juvenile court. The state may also appeal as of right from a final judgment in a habeas corpus, extradition, ~~or~~ post-conviction proceeding, or from an order or judgment entered pursuant to Rule 36, Tennessee Rules of Criminal Procedure.

(d) * * * *

Advisory Commission Comment [2012]

Generally. Effective July 1, 2012, the Supreme Court adopted Tenn. Sup. Ct. R. 10B, governing motions seeking disqualification or recusal of a judge. Section 2 of Rule 10B provides the procedural framework for appealing the denial of a disqualification or recusal motion by a judge of a court of record. Section 2.01 of the rule provides that such appeals may be effected either by filing an interlocutory appeal as of right authorized by the rule or by raising the disqualification or recusal issue in an appeal as of right at the conclusion of the case. Under Section 2.01, those two methods of appeal are "the exclusive methods for seeking appellate review of any issue concerning the trial court's ruling on a motion filed pursuant to this Rule." (Emphasis added.) As a result, "neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge's ruling on such a motion." Tenn. Sup. Ct. R. 10B, Explanatory Comment to Section 2. Attorneys or self-represented litigants therefore should consult Tenn. Sup. Ct. R. 10B concerning the procedure for appealing from the denial of a disqualification or recusal motion.

Subdivisions (b) and (c). Tenn. R. App. P. 3(b) is amended to update an obsolete cross-reference to Tenn. R. Crim. P. 37(b)(2), changing the subparagraph designations from "(i) or (iv)" to "(A) or (D)."

Rule 3(b) and (c) are amended to provide for an appeal as of right from the trial court's filing of a corrected judgment or order pursuant to Tenn. R. Crim. P. 36.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 5

APPEAL AS OF RIGHT: SERVICE OF NOTICE OF APPEAL;
DOCKETING OF THE APPEAL

[Amend Rule 5(c) by adding the text indicated below by underlining:]

(a) Service of Notice of Appeal in Civil Actions. – Not later than 7 days after filing the notice of appeal, the appellant in a civil action shall serve a copy of the notice of appeal on counsel of record for each party or, if a party is not represented by counsel, on the party. Proof of service in the manner provided in Rule 20(e) shall be filed with the clerk of the trial court within 7 days after service. The appellant shall note on each copy served the date on which the notice of appeal was filed. Service shall be sufficient notwithstanding the death of a party or counsel. The trial court clerk shall promptly serve all filed notices of appeal on the clerk of the appellate court designated in the notice of appeal. With the notice of appeal, the trial court clerk shall also serve on the clerk of the appellate court either an appeal bond or an affidavit of indigency or a notice of the appellant's failure to file either an appeal bond or affidavit.

(b) Service of Notice of Appeal in Criminal Actions. – In criminal actions, when the defendant is the appellant and the action was prosecuted by the state, the defendant shall serve a copy of the notice of appeal on the district attorney general of the county in which the judgment was entered and on the attorney general at the Attorney General's Nashville, Tennessee office. When the defendant is the appellant and the action was prosecuted by a governmental entity other than the state for the violation of an ordinance, the copy of the notice of appeal shall be served on the chief legal officer of the entity or, if this officer's name and address does not appear of record, then on the chief

administrative officer of the entity at his or her official address. When the state or other prosecuting entity is the appellant, a copy of the notice of appeal shall be served on the defendant and the defendant's counsel. Service shall be made not later than 7 days after filing notice of appeal and proof of service shall be filed with the clerk of the trial court within 7 days after service. The appellant shall note on each copy served the date on which the notice of appeal was filed. The trial court clerk shall promptly serve all filed notices of appeal on the clerk of the appellate court designated in the notice of appeal.

(c) Docketing of the Appeal. – The clerk of the appellate court shall enter the appeal on the docket immediately upon receipt of the copy of the notice of appeal served upon the clerk of the appellate court by the trial court clerk or, in appeals other than appeals as of right pursuant to Rule 3, upon receipt of the application or petition initiating the appeal. The clerk of the appellate court shall immediately serve notice on all parties of the docketing of the appeal. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if such title does not contain the name of the appellant, the party's name, identified as appellant, shall be added to the title. With the service of the notice of docketing of the appeal, the clerk of the appellate court shall send to the appellant, and the appellant shall fully complete and return to the clerk, a docketing statement in the form prescribed by the clerk.

<u>If more than one party files a notice of appeal in an action appealed to the Court of Appeals pursuant to Tenn. R. App. P. 3, the first party filing a notice of appeal shall be deemed to be the appellant, unless otherwise directed by the court.</u>

Advisory Commission Comment [2012]

Tenn. R. App. P. 13(a) provides that "any question of law may be brought up for review and relief by any party" and that "[c]ross-appeals, separate appeals, and separate applications for permission to appeal are not required." Tenn. R. App. P. 13(a) goes on to provide that "[d]ismissal of the original appeal shall not preclude issues raised by another party from being considered by an appellate court." *See also* Tenn. R. App. P. 6(c) (providing that a party wanting to litigate appellate issues despite dismissal of the original appellant's appeal shall file a cost bond, with surety, to replace the cost bond filed by the original appellant); Tenn. R. App. P. 15(a) (providing for the voluntary dismissal of an appeal by stipulation or on motion, but also stating, "[a]ny party wanting to litigate appellate issues despite dismissal of the original appeal must provide notice of such intent in a response to the motion to dismiss"). Thus, once one party files a notice of appeal, other parties are not required to file a separate notice of appeal in order to raise any issue(s) in the appeal. Tenn. R. App. P. 13(a), Advisory Commission Comment (stating, "[t]he result of eliminating any requirement that an appellee file the appellee's own notice of appeal is that once any party files a notice of appeal the appellate court may consider the case as a whole"). As a practical matter, however, it is not uncommon for more than one party to file a notice of appeal.

Tenn. R. App. P. 5(c) is amended to state that, in cases appealed to the Court of Appeals pursuant to Tenn. R. App. P. 3, the first party to file a notice of appeal is considered to be the appellant. The purpose of the amendment is to clarify the application of other rules of appellate procedure, e.g., Tenn. R. App. P. 6 (governing bond for costs on appeal in civil actions), Tenn. R. App. P. 24 (governing the content and preparation of the record on appeal), and Tenn. R. App. P. 29 (governing the filing and service of briefs). A second (or later) party filing a notice of appeal may file a reply brief pursuant to Tenn. R. App. P. 27(c); that rule permits an appellee who is seeking relief from the judgment to file a brief in reply to the response of the appellant to the issues presented by appellee's request for relief.

The amendment does not apply to cases appealed to the Court of Criminal Appeals. In criminal cases involving more than one defendant, the trial court enters a separate judgment as to each defendant. For that reason, each defendant filing a notice of appeal (and also the State, when it files a notice of appeal) is considered to be an appellant. *See* Tenn. R. App. P. 3(b) and (c) (providing for appeals as of right by the defendant and/or the State in specified criminal proceedings) and Tenn. R. App. P. 5(b) (regarding service of the notice of appeal in criminal actions).

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 9

INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT

[Add new Comment below; the text of the rule is unchanged:]

Advisory Commission Comment [2012]

Effective July 1, 2012, the Supreme Court adopted Tenn. Sup. Ct. R. 10B, governing motions seeking disqualification or recusal of a judge. Section 2 of Rule 10B provides the procedural framework for appealing the denial of a disqualification or recusal motion by a judge of a court of record. Section 2.01 of the rule provides that such appeals may be effected either by filing an interlocutory appeal as of right authorized by the rule or by raising the disqualification or recusal issue in an appeal as of right at the conclusion of the case. Under Section 2.01, those two methods of appeal are "the exclusive methods for seeking appellate review of any issue concerning the trial court's ruling on a motion filed pursuant to this Rule." (Emphasis added.) As a result, "neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge's ruling on such a motion." Tenn. Sup. Ct. R. 10B, Explanatory Comment to Section 2. Attorneys or self-represented litigants therefore should consult Tenn. Sup. Ct. R. 10B concerning the procedure for appealing from the denial of a disqualification or recusal motion.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 10

EXTRAORDINARY APPEAL BY PERMISSION ON
ORIGINAL APPLICATION TO THE APPELLATE COURT

[Add new Comment below; the text of the rule is unchanged:]

Advisory Commission Comment [2012]

Generally. Effective July 1, 2012, the Supreme Court adopted Tenn. Sup. Ct. R. 10B, governing motions seeking disqualification or recusal of a judge. Section 2 of Rule 10B provides the procedural framework for appealing the denial of a disqualification or recusal motion by a judge of a court of record. Section 2.01 of the rule provides that such appeals may be effected either by filing an interlocutory appeal as of right authorized by the rule or by raising the disqualification or recusal issue in an appeal as of right at the conclusion of the case. Under Section 2.01, those two methods of appeal are "the exclusive methods for seeking appellate review of any issue concerning the trial court's ruling on a motion filed pursuant to this Rule." (Emphasis added.) As a result, "neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge's ruling on such a motion." Tenn. Sup. Ct. R. 10B, Explanatory Comment to Section 2. Attorneys or self-represented litigants therefore should consult Tenn. Sup. Ct. R. 10B concerning the procedure for appealing from the denial of a disqualification or recusal motion.

Subdivision (b). When the intermediate court *grants* an extraordinary appeal under Rule 10, an appeal of the final decision of the intermediate court to the Supreme Court is governed by Rule 11. Accordingly, a party has 60 days from the date of the intermediate court's judgment in the extraordinary appeal to file an application for permission to appeal under Rule 11. Note, however, that when the intermediate court *denies* an extraordinary appeal, Rule 10(b) provides that an application for extraordinary appeal must be filed in the Supreme Court within 30 days of the intermediate court's order denying the extraordinary appeal.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 11

APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT

[Amend paragraph (b) by adding the text underlined below:]

(a) Application for Permission to Appeal; Grounds. — An appeal by permission may be taken from a final decision of the Court of Appeals or Court of Criminal Appeals to the Supreme Court only on application and in the discretion of the Supreme Court. In determining whether to grant permission to appeal, the following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons that will be considered: (1) the need to secure uniformity of decision, (2) the need to secure settlement of important questions of law, (3) the need to secure settlement of questions of public interest, and (4) the need for the exercise of the Supreme Court's supervisory authority.

(b) Time; Content. — The application for permission to appeal shall be filed with the clerk of the Supreme Court within 60 days after the entry of the judgment of the Court of Appeals or Court of Criminal Appeals if no timely petition for rehearing is filed, or, if a timely petition for rehearing is filed, within 60 days after the denial of the petition or entry of the judgment on rehearing. Except for an application seeking to appeal the Court of Criminal Appeals' disposition of an appeal pursuant to Rule 9 or Rule 10, the time period for filing an application for permission to appeal is not jurisdictional in a case arising from the Court of Criminal Appeals and may be waived by the Supreme Court in the interest of justice. The application shall contain a statement of: (1) the date on which the judgment was entered and whether a petition for rehearing was filed, and if so, the date

of the denial of the petition or the date of entry of the judgment on rehearing; (2) the questions presented for review and, for each question presented, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); (3) the facts relevant to the questions presented, but facts correctly stated in the opinion of the intermediate appellate court need not be restated in the application; and (4) the reasons, including appropriate authorities, supporting review by the Supreme Court. The brief of the appellant referred to in subdivision (f) of this rule may be served and filed with the application for permission to appeal. A copy of the opinion of the appellate court shall be appended to the application.

(c) * * * *

Advisory Commission Comment [2012]

Paragraph (b) is amended to provide that the time period for filing an application for permission to appeal pursuant to Rule 11 is not jurisdictional in cases arising from the Court of Criminal Appeals (subject to two exceptions discussed below) and may be waived by the Supreme Court in the interest of justice. The amendment is based upon a similar provision governing notices of appeal in criminal cases. *See* Tenn. R. App. P. 4(a).

The discretionary waiver authority granted to the Supreme Court in the amended rule is limited to cases arising from the Court of Criminal Appeals. Thus, the amendment does not apply to cases arising from the Court of Appeals. Additionally, the amended rule provides that the waiver authority granted to the Supreme Court does not extend to cases arising from the Court of Criminal Appeals' disposition of an interlocutory appeal filed pursuant to Rule 9 or an extraordinary appeal filed pursuant to Rule 10. Consequently, in cases arising from the Court of Appeals and in cases arising from interlocutory or extraordinary appeals filed in the Court of Criminal Appeals, the applicable time periods for filing an application for permission to appeal to the Supreme Court are jurisdictional and cannot be waived.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 22

MOTIONS

[Amend paragraphs (b) and (c) by adding the new subtitles indicated below by underlining; the text of the rule is unchanged:]

(a) * * * *

(b) Motions for Procedural Orders. Notwithstanding the provisions of (a) of this Rule 22 as to motions generally, motions for procedural orders, including any motion under Rule 21(b), may be acted upon at any time, without awaiting a response. The motion shall contain a statement concerning efforts to contact adverse counsel and shall reflect whether there is opposition to the motion. Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action. Pursuant to rule or order of the courts, motions for specified types of procedural orders may be disposed of by the clerk.

(c) Disposition of Motions. On request of a party or on its own motion, the appellate court may place any motion on the calendar for hearing or the court may otherwise dispose of the motion as it may determine. When a motion has been placed on the calendar for hearing, the clerk shall notify each party of the date and the time designated for the hearing. Pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk.

* * * *

Advisory Commission Comment [2012]

Paragraphs (b) and (c) are amended to supply a subtitle for each paragraph.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 24

CONTENT AND PREPARATION OF THE RECORD

[The text of the rule is unchanged; add the following new Advisory Commission Comment:]

Advisory Commission Comment [2012]

Tenn. R. App. P. 3(b) and (c), as well as Tenn. R. Crim. P. 36, were amended in 2012 to provide for an appeal as of right from the trial court's filing of a corrected judgment or order.

Tenn. R. App. P. 24(a) lists the items which must be included in the record on appeal. In an appeal as of right from the entry of a corrected judgment or order pursuant to Tenn. R. Crim. P. 36, the record on appeal should include the listed items (e.g., papers filed in the trial court, exhibits, transcript or statement of the evidence or proceedings, etc.) pertaining to the original judgment or order, as well as those items pertaining to the corrected judgment or order. As provided by Tenn. R. App. P. 24(a), however, the parties may designate that only certain items be included "[i]f less than the full record on appeal. . .is deemed sufficient to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal[.]"

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 30

FORM OF BRIEFS AND OTHER PAPERS

[Amend Rule 30(a) as indicated (new text underlined; deleted text stricken); the other paragraphs of the rule are unchanged:]

(a) Production Methods; Paper. – Briefs, transcripts or statements, applications, answers in opposition, petitions, motions, supporting papers, and objections should be produced on opaque, unglazed white paper by any printing, duplicating, or copying process that provides a clear black image. The use of recycled paper with the highest feasible percentage of postconsumer waste content is recommended and encouraged. Original typewritten pages may be used, but not carbon copies except on behalf of parties allowed to proceed as poor persons. All printed matters should be on paper 6⅛ by 9¼ inches in type not smaller than 11 point and type matter 4¼ by 7¼ inches. If not printed, copies should be on paper 8½ by 11 inches, double spaced, except for quoted matter, which may be single spaced, ~~with the text not smaller than standard elite typewriting and not to exceed 6½ by 9½ inches~~ with the text (1) when typewriter generated not smaller than standard elite type or (2) when computer generated not smaller than times new roman 12 point font and, in either event, not to exceed 6½ by 9½ inches on the page. Papers should be numbered on the bottom and fastened on the left.

* * * *

Advisory Commission Comment [2012]

Paragraph (a) is amended to specify the minimum font size for non-printed papers generated by a computer.