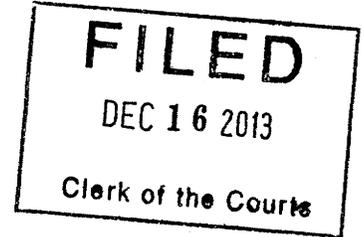


**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: AMENDMENTS TO TENNESSEE
 RULES OF APPELLATE PROCEDURE**

No. ADM2013-02056



ORDER

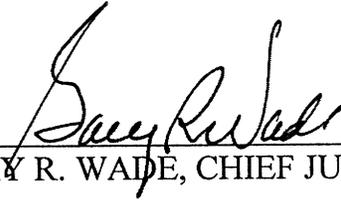
The Court adopts the attached amendments effective July 1, 2014, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

- | | |
|---------|--|
| RULE 2 | SUSPENSION OF RULES |
| RULE 3 | APPEAL AS OF RIGHT: AVAILABILITY;
METHOD OF INITIATION |
| RULE 4 | APPEAL AS OF RIGHT: TIME FOR FILING
NOTICE OF APPEAL |
| RULE 6 | SECURITY FOR COSTS ON APPEAL |
| RULE 9 | INTERLOCUTORY APPEAL BY
PERMISSION FROM THE TRIAL COURT |
| RULE 10 | EXTRAORDINARY APPEAL BY
PERMISSION ON ORIGINAL
APPLICATION IN THE APPELLATE
COURT |
| RULE 11 | APPEAL BY PERMISSION FROM
APPELLATE COURT TO SUPREME COURT |
| RULE 24 | CONTENT AND PREPARATION OF THE
RECORD |
| RULE 25 | COMPLETION AND TRANSMISSION OF
THE RECORD. |

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

IT IS SO ORDERED.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "Gary R. Wade", written in a cursive style. The signature is positioned above a horizontal line.

GARY R. WADE, CHIEF JUSTICE

APPENDIX

**2014 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 2

SUSPENSION OF RULES

[Amend the second paragraph of the original Advisory Commission Comment as indicated below (new text underlined>) and by adding the 2014 Comment below; the text of the Rule is unchanged:]

For good cause, including the interest of expediting decision upon any matter, the Supreme Court, Court of Appeals, or Court of Criminal Appeals may suspend the requirements or provisions of any of these rules in a particular case on motion of a party or on its motion and may order proceedings in accordance with its discretion, except that this rule shall not permit the extension of time for filing a notice of appeal prescribed in Rule 4, an application for permission to appeal to the Supreme Court from the denial of an application for interlocutory appeal by an intermediate appellate court prescribed in Rule 9(c), an application for permission to appeal to the Supreme Court from an intermediate appellate court's denial of an extraordinary appeal prescribed in Rule 10(b), an application for permission to appeal prescribed in Rule 11, or a petition for review prescribed in Rule 12.

Advisory Commission Comments

The primary purpose of this rule is to make clear the power of the appellate courts to suspend the requirements or provisions of any of these rules in a particular case. The courts are thus empowered to relieve litigants of the consequences of noncompliance with the rules in those circumstances in which it is appropriate to do so. The need for this power is the result of two principal considerations. These rules, as do most rules of law, necessarily speak in somewhat general terms. Otherwise, the rules would be overburdened with qualifications, exceptions, specifications, and provisos. In addition, no person or group of persons can possibly foresee all the situations life may churn up. This rule, therefore, permits the necessary individualization of the law

in particular cases, and provides the source of authority for the courts to formulate law in situations not currently foreseeable.

The exceptions to this rule prohibit the appellate courts from extending the time for taking an appeal as of right, applying for permission to appeal from an intermediate appellate court to the supreme court, and for petitioning for review in those rare cases in which the Court of Appeals directly reviews orders of an administrative agency. Those times are specified in Rules 4, 11, and 12. Since filing a notice of appeal is an essential step necessary to a valid appeal of right, this step should not generally be waivable inasmuch as the rights of parties remain uncertain during the time available for filing a notice of appeal. Similar considerations prompted the other two exceptions. But see Advisory Commission Comment [2014] to this rule, discussing limited waiver provisions set out in Rules 4(a) and 11(b).

The rule envisions that the appellate court may act on its own motion or on motion of a party. A motion by a party should be made in the manner provided in Rule 22. If the appellate court does suspend the requirements or provisions of these rules, proceedings thereafter will be had in accordance with the discretion and direction of the court.

The final clause prohibiting extensions in no way affects computation of time under T.R.A.P. 21. For example, if the thirtieth day to file a notice of appeal falls on a holiday, the notice could be filed on the next business day.

Advisory Commission Comments [2003]

The rule was amended to clarify that the filing deadlines to the Supreme Court under T.R.A.P. 9(c) and 10 are jurisdictional, like those in T.R.A.P. 4, 11 and 12.

Advisory Commission Comment [2014]

Rule 2 bars an appellate court from extending the time for filing a notice of appeal pursuant to Rule 4(a) and from extending the time for filing one of the listed applications for permission to appeal. Rules 4(a) and 11(b), however, grant the Court of Criminal Appeals and the Supreme Court, respectively, the discretionary authority to waive the pertinent time period if a notice of appeal or an application for permission to appeal pursuant to Tenn. R. App. P. 11 is not timely filed in a criminal case. (See Rule 11(b) for two types of criminal appeals in which the waiver provision in that rule does not apply.) The distinction between a prohibited extension under Rule 2 and a permissible waiver under Rules 4(a) and 11(b) is that an extension is prospective (i.e., granting a motion for an extension of time to file), while a waiver is retrospective (i.e., waiving an untimely filing in a criminal appeal, in the court's discretion and "in the interest of justice," depending on the reason(s) for the untimely filing).

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 3

APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION

[Amend the third paragraph of “Subdivision (e)” in the original Advisory Commission Comment as indicated below; the text of the rule and the text of the other Advisory Commission Comments are unchanged.]

(a) * * * *

Advisory Commission Comment

Subdivision (a). * * * *

Subdivision (e). The intent of this subdivision is to provide a uniform and simplified method of taking an appeal as of right. This subdivision combined with Rules 4 and 5 require that a notice of appeal be filed with the clerk of the trial court within the time prescribed for taking an appeal and that a copy of the notice of appeal be served on all parties. The form and content of the notice of appeal are set out in official form 1, and Rule 48 specifically provides that the use of this form is sufficient under these rules.

Rule 36 provides that relief need not be granted to a party who fails to take whatever action is reasonably available to prevent or nullify the harmful effect of error. Failure to present an issue to the trial court, therefore, will typically not merit appellate relief. In addition, under Rule 13(c) the appellate court is generally limited in its review to those facts set forth in the record. Thus matters that can only be made a part of the record by a new trial motion must be so included in order to gain appellate review. Jury misconduct provides one example.

Under Rule 16, two or more persons may proceed on appeal jointly. Thus it is entirely proper for parties to file a joint notice of appeal; however, a joint notice of appeal must comply with subparagraph subdivision (f) of this rule.

Subdivision (f). * * * *

Advisory Commission Comment [2014]

The third paragraph of “Subdivision (e)” in the original Advisory Commission was amended by substituting the word “subdivision” for the word “subparagraph.” The text of the rule and the text of the other Advisory Commission Comments were not changed.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 4

APPEAL AS OF RIGHT: TIME FOR FILING NOTICE OF APPEAL

[Amend Tenn. R. App. P. 4(e) as indicated below:]

(a) Generally. — * * * *

(e) Effect of Specified Timely Motions on Trial Court's Jurisdiction. — The trial court retains jurisdiction over the case pending the court's ruling on any timely filed motion specified in subparagraph subdivision (b) or (c) of this rule. If a motion specified in either subparagraph subdivision (b) or (c) is filed within the time permitted by the applicable rule referred to in that subparagraph subdivision, the filing of a notice of appeal prior to the filing of the motion, or the filing of a notice of appeal prior to the trial court's ruling on an earlier filed motion, does not deprive the trial court of jurisdiction to rule upon the motion. A notice of appeal filed prior to the trial court's ruling on a timely specified motion shall be deemed to be premature and shall be treated as filed after the entry of the order disposing of the motion and on the day thereof. If an appellant named in a premature notice of appeal decides to terminate the appeal as a result of the trial court's disposition of a motion listed in subparagraph subdivision (b) or (c) of this rule, the appellant shall file in the appellate court a motion to dismiss the appeal pursuant to Rule 15.

Advisory Commission Comment [2014]

Subdivision (e) was amended by adding the following text to the second sentence: “or the filing of a notice of appeal prior to the trial court’s ruling on an earlier filed motion[.]” That text was added to clarify that the filing of a notice of appeal prior to the trial court’s ruling on a timely motion specified in subdivision (b) or (c) does not affect the trial court’s ability to rule on the pending motion, so long as the motion was timely filed before or after the filing of the notice of appeal.

Subdivision (e) also was amended by substituting (in four places) the word “subdivision” for the word “subparagraph.”

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 6

SECURITY FOR COSTS ON APPEAL

[Amend the 2002 Advisory Commission Comment as indicated below; the text of the rule is unchanged.]

(a) * * * *

Advisory Commission Comment [2002]

New ~~subparagraph~~ subdivision (b) states the procedure for payment of all litigation taxes applicable to the appeal. New ~~subparagraph~~ subdivision (c) conforms to a similar provision in Appellate Rule 15(a).

Advisory Commission Comment [2014]

The 2002 Advisory Commission Comment was amended by substituting (in two places) the word “subdivision” for the word “subparagraph.” The text of the rule and the text of the other Advisory Commission Comments were not changed.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 9

INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT

[Amend Tenn. R. App. P. 9(d) by adding the underlined text below:]

(a) * * * *

(d) Content of Application; Answer.

The application shall contain: (1) a statement of the questions presented for review; (2) a statement of the facts necessary to an understanding of why an appeal by permission lies; and (3) a statement of the reasons supporting an immediate appeal. A statement of reasons is sufficient if it simply incorporates by reference the trial court's reasons for its opinion that an appeal lies. The application shall be accompanied by copies of: (1) the order appealed from, (2) the trial court's statement of reasons, and (3) the other parts of the record necessary for determination of the application for permission to appeal. Within 10 days after filing of the application, any other party may file an answer in opposition, with copies in the number required for the application, together with any additional parts of the record such party desires to have considered by the appellate court. The answer shall be served on all other parties in the manner provided in Rule 20 for the service of papers. If available, the color of the cover of the application shall be blue, and the cover of the answer shall be red. The color of the cover of an answer filed by an amicus curiae shall be green. The application and answer shall be submitted without oral argument unless otherwise ordered.

Advisory Commission Comment [2014]

Subdivision (d) was amended to specify the color of the covers of applications and answers filed pursuant to Rule 9.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 10

EXTRAORDINARY APPEAL BY PERMISSION ON
ORIGINAL APPLICATION IN THE APPELLATE COURT

[Amend Tenn. R. App. P. 10 by adding the new subdivision (d) below:]

(d) If available, the color of the cover of the application shall be blue. If the appellate court orders that an answer be filed, the cover of the answer shall be red, except that the cover of an answer filed by an amicus curiae shall be green.

Advisory Commission Comment [2014]

Subdivision (d) was added to the rule to specify the color of the covers of applications and answers (if any) filed pursuant to Rule 10.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 11

APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT

[Amend Tenn. R. App. P. 11(c) by adding the underlined text and deleting the overstricken text below:]

(a) * * * *

(c) Number of Copies; Service; Color of Covers. — The original and six five copies of the application shall be filed. The application shall be served on all other parties in the manner provided in Rule 20 for the service of papers. If available, the color of the cover of the application shall be blue; the cover of an answer shall be red, except that the cover of an answer filed by an amicus curiae shall be green.

* * * *

Advisory Commission Comment [2014]

Subdivision (d) was amended to reduce from six to five the number of copies to be filed with the original application for permission to appeal. Subdivision (d) also was amended to specify the color of the covers of applications and answers filed pursuant to Rule 11.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 24

CONTENT AND PREPARATION OF THE RECORD

[Amend Tenn. R. App. P. 24(b) & (c) as indicated below:]

(a) * * * *

(b) Transcript of Stenographic or Other Substantially Verbatim Recording of Evidence or Proceedings. Except as provided in subdivision (c), if a stenographic report or other contemporaneously recorded, substantially verbatim recital of the evidence or proceedings is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the clerk of the trial court and serve on the appellant a designation of additional parts to be included. The appellant shall either have the additional parts prepared at the appellant's own expense or apply to the trial court for an order requiring the appellee to do so. The transcript, certified by the appellant, the appellant's counsel, or the reporter as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 60 days after filing the notice of appeal. An electronic copy of the transcript, meeting the technical specifications set by the Administrative Office of the Courts, shall be filed with the original transcript. Upon filing the transcript, the appellant shall simultaneously

serve notice of the filing on the appellee. Proof of service shall be filed with the clerk of the trial court with the filing of the transcript. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the clerk of the trial court within fifteen days after service of notice of the filing of the transcript. Any differences regarding the transcript shall be settled as set forth in subdivision (e) of this rule.

(c) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, or if the trial court determines, in its discretion, that the cost to obtain the stenographic report in a civil case is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable alternative to a stenographic report, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant or the appellant's counsel as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. Proof of service shall be filed with the clerk of the trial court with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the clerk of the trial court within fifteen days after service of the declaration and notice of the filing of the statement. Any differences regarding the statement shall be settled as set forth in subdivision (e) of this rule.

(d) * * * *

Advisory Commission Comment [2014]

Subdivision (b). Tenn. R. App. P. 24(b) was amended to cross-reference subdivision (c), which sets out an exception to subdivision (b)'s requirement that the appellant prepare a "stenographic report or other contemporaneously recorded, substantially verbatim recital of the evidence or proceedings[.]" if "available."

Tenn. R. App. P. 24(b) also was amended to require the filing of an electronic copy of the transcript, along with the original transcript. The electronic copy must meet the technical specifications established by the Administrative Office of the Courts ("AOC"); those specifications may be obtained on the Tennessee appellate courts' website (<http://www.tncourts.gov>) or by contacting the AOC.

Along with this amendment to Tenn. R. App. P. 24(b), Tenn. R. App. P. 25(a) was amended to require the trial court clerk to include both the original transcript and the electronic copy of the transcript in the record on appeal (in those cases in which a transcript is filed). The purpose of requiring the submission of an electronic copy of the transcript is to facilitate the appellate court's efficient review of the appeal.

Subdivision (c). Tenn. R. App. P. 24(c) was amended to provide that a statement of the evidence or proceedings may be filed in a civil case — instead of a stenographic report or other contemporaneously recorded, substantially verbatim recital of the evidence or proceedings — if the trial court determines, in its discretion, that the cost to obtain the stenographic report is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal may justify. In making its determination, the trial court should start with the presumption that the cost to obtain the stenographic report is beyond the financial means of an appellant who is appealing as an indigent person as allowed by Tenn. R. App. P. 18. The amendment to subdivision (c) is limited to civil cases because matters pertaining to the transcript in criminal proceedings are governed by statute and by case law. *See* Title 40, Chapter 14, Part 3 ("Transcripts and Court Reporters"), Tennessee Code Annotated; *Britt v. N. Carolina*, 404 U.S. 226 (1971) (stating, "the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are available for a price to other prisoners"); *accord State v. Elliott*, 524 S.W.2d 473, 475 (Tenn. 1975).

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 25

COMPLETION AND TRANSMISSION OF THE RECORD

[Amend Tenn. R. App. P. 25(a) by adding the underlined text indicated below and also amend Tenn. R. App. P. 25 by adding the new subdivision (h) below:]

(a) Time for Completion of the Record; Duty of the Parties. – The record on appeal shall be assembled, numbered and completed by the clerk of the trial court within 45 days after filing of the transcript or statement prepared in accordance with Rule 24(b) or 24(c) or, if no transcript or statement is to be filed, within 45 days after filing of appellant’s notice under Rule 24(d) that no transcript or statement is to be filed, unless the time is extended by an order entered under subdivision (d) of this rule or if proof of service of the notice of appeal has not been filed. Unless the time has been extended by order, if the appellant fails to file within 60 days from the filing of the notice of appeal either the transcript or statement of evidence prepared pursuant to Rule 24(b) or 24(c) or the notice under Rule 24(d) that no transcript or statement is to be filed, the clerk of the trial court shall provide written notice within 10 days to the clerk of the appellate court of the appellant’s failure to comply with Rule 24(b) or (c) or (d), with a copy provided to counsel and pro se parties. ~~After filing notice of appeal~~ After the filing of the notice of appeal, the parties shall comply with the provisions of Rule 24 and shall take any other action necessary to enable the clerk to complete the record. If a transcript is filed in accordance with Rule 24(b), the clerk shall include both the original transcript and the electronic copy of the transcript in the record. The clerk of the trial court shall

number the pages of the documents comprising the record and shall prepare for transmission with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Copies of all papers filed in the trial court, except the transcript or statement of the evidence or proceedings and exhibits, shall be bound together in chronological order; such bound volume (or, if more than one bound volume, the first such volume) shall contain a table of contents listing in chronological order all of the papers filed in the trial court with each document's corresponding page number.

Exhibits shall be compiled in numerical order and bound in a volume or volumes separate from the volume of papers filed in the trial court and separate from the transcript or statement of the evidence or proceedings. The volume of exhibits shall contain a table of contents listing all exhibits, whether or not they are included in the record. Each exhibit to be included in the record shall be securely stapled to a blank page, or placed in a durable envelope which shall be securely stapled to a blank page, or placed within a plastic sheet protector; each such page or plastic sheet protector then shall be bound within the volume of exhibits. If an exhibit is not included in the record pursuant to subdivision (b) of this rule, or if an exhibit is included in the record but cannot be bound into the volume of exhibits due to the nature of the exhibit, the trial court clerk shall include in numerical order in the volume of exhibits a page indicating the number of the exhibit, a description of the exhibit, and a statement of the reason the exhibit is not contained in the volume of exhibits. All exhibits which are to be included in the record but which cannot be bound in the volume of exhibits due to the nature of the exhibits shall be placed securely in a durable envelope or other suitable container, which shall be labeled with the style of the case, the docket number, and the exhibit

number of the exhibit contained therein.

(b) * * * *

(h) Return of Record to Trial Court for Non-Compliance. — If the clerk of the appellate court determines that the record transmitted to the appellate court fails to comply with the provisions of these rules governing the preparation, completion, and transmission of the record, the clerk is authorized to return the record to the trial court with a notification to the clerk of the trial court as to the specific lack of compliance with the rules. In such cases, the clerk of the trial court shall promptly remedy the lack of compliance and then promptly transmit the modified record to the clerk of the appellate court.

Advisory Commission Comment [2014]

Subdivision (a). Tenn. R. App. P. 25(a) was amended to require the clerk to include both the original transcript and the electronic copy of the transcript in the record on appeal (in those cases in which a transcript is filed). This amendment corresponds to the simultaneous amendment to Tenn. R. App. P. 24(b), requiring the filing of an electronic copy of the transcript, along with the original transcript. The purpose of requiring the submission of an electronic copy of the transcript is to facilitate the appellate court's efficient review of the appeal.

Tenn. R. App. P. 25(a) also was amended to require that the bound volume(s) of the papers filed in the trial court include a table of contents listing those papers in the order in which the papers were filed in the trial court. Prior to the adoption of the amendment, the practice among trial court clerks varied, with some clerks preparing a table of contents in chronological order, while others prepared a table of contents in alphabetical order (by the clerk's description of each document). Having a table of contents arranged in chronological order greatly assists the appellate court in its efficient review of the record.

Subdivision (h). Tenn. R. App. P. 25 was amended to add subdivision (h), authorizing the clerk of the appellate court to return to the trial court any record that fails to comply with the provisions of the Rules of Appellate Procedure governing the preparation, completion, and transmission of the record. *See also* Tenn. R. App. P. 40(i) (providing that the trial court clerk's statutory fee shall be forfeited for failing to complete and transmit the record on appeal in the time and manner provided in these rules); *Aclin v. Speight*, 611 S.W.2d 54, 56 (Tenn. Ct. App. 1980) (disallowing trial court clerk's costs because of inclusion of extraneous documents in the record on appeal). Like the amendments to subdivision (a), this amendment was intended to promote the appellate court's efficient review of the record.