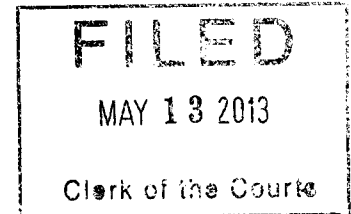


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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

No. M2013-01132-SC-RL2-RL

ORDER



Rule 26, Rules of the Tennessee Supreme Court, governs the “Use of Videotape Equipment or CD-ROM to Record Court Proceedings.” Rule 26 was first adopted in 1993 and has been amended only once, in 2001.

The Sixth Circuit Court for the Twentieth Judicial District is the only Tennessee trial court currently authorized by this Court to electronically record its proceedings pursuant to Tenn. Sup. Ct. R. 26, and this Court presently has no plans to expand the application of the rule to other Tennessee trial courts. However, in light of changes in technology since the initial adoption and subsequent amendment of Rule 26, and also to update the formatting of the rule, the Court is considering the adoption of a revised Rule 26.

The proposed revision of Rule 26 is set out in Appendix A to this order. Appendix B is a redlined version comparing the proposed revision to the current rule. The Court hereby solicits written comments regarding the proposal from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Wednesday, June 12, 2013. Written comments should be addressed to:

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

and should reference the docket number set out above.

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

IT IS SO ORDERED.

PER CURIAM

APPENDIX A

PROPOSED REVISED TENN. SUP. CT. R. 26

[Under the proposed amendment, the text of existing Tenn. Sup. Ct. R. 26 would be repealed in its entirety and replaced with the following revised rule:]

Rule 26. Official Electronic Recordings of Court Proceedings

Section 1. Scope

1 **1.01.** This rule applies to any court of record authorized by the Supreme Court of Tennessee
2 to use electronic recording equipment to record court proceedings.

3 **Section 2. Record of Trial Court Proceedings**

4 **2.01. Use and Format of Electronic Recordings.** The term “transcript” used in Rule 24,
5 Tennessee Rules of Appellate Procedure, shall include an official electronic recording of court
6 proceedings recorded and maintained in accordance with this rule. “Electronic recording” shall
7 include recordings to videotape, CD-ROM, DVD, or similar electronic storage format.

8 **2.02. Electronic Recordings – Official Record.** In court proceedings where electronic
9 recording equipment is available, the official record of court proceedings shall consist of two
10 electronic recordings, recorded simultaneously, of the proceedings. Upon the filing of a notice of
11 appeal, one of the two electronic recordings, or a court-certified copy of a portion thereof, of the
12 court proceeding being appealed shall be filed and certified by the clerk as part of the record on
13 appeal. The second electronic recording shall be retained by the clerk of the trial court.

14 **2.03. Method of Identification.**

15 **(a) Official Recording.** For identification purposes, the clerk shall designate
16 on each of the two official electronic recordings:

17 (1) on the first line, the judicial district number, the name of
18 the court, including the division in which the proceeding is being
19 held, the sequential number of the recording (counting all recordings
20 made in that court since the start of the current calendar year), either
21 the letter “A” (for the recording being retained by the court) or the
22 letter “B” (for the recording being filed as part of the record on
23 appeal);

24 (2) on the second line, the caption and case file number of the
25 proceeding recorded on the recording (for example: “Smith vs. Jones,
26 No. 93-325”) or the nature of the proceedings before the court if those

27 proceedings pertain to more than one case (for example: criminal
28 motions involving more than one defendant); and

29 (3) on the third line, the date on which the recording was
30 recorded in the form: MM/DD/YY.

31 **(b) Certified Copy of Partial Official Recording.** If a court-certified copy
32 of a portion of any recording is prepared for filing as a part of the record on appeal,
33 the clerk shall designate on the partial recording:

34 (1) on the first line, the judicial district number, the name of
35 the court, including the division in which the proceeding is being
36 held, and the word “copy”;

37 (2) on the second line, the caption of the case being appealed,
38 the case file number, and the number of the source recording from
39 which the copy was made; and

40 (3) on the third line, the date on which the source recording
41 was recorded.

42 **2.04. Duplicate Copies of Electronic Recordings.**

43 **(a) Simultaneous Duplicate Copies.** A party to any court proceeding may
44 order, in advance, a simultaneously made duplicate of the electronic recording being
45 made of the proceeding. The cost of a simultaneous duplicate recording shall be
46 \$50.00 per disc (or other media format) and shall be payable to either the clerk of the
47 court or the trial court administrator, as established by local rule, at the time the order
48 is placed.

49 **(b) Subsequent Duplicate Copies.** A party to any court proceeding may
50 order, subsequent to the time a proceeding was recorded, a duplicate copy of the
51 electronic recording for use in preparing an appeal or in preparing for subsequent
52 proceedings. Upon any order for a subsequent duplicate recording, the court shall
53 arrange for the recording of the duplicate(s). The cost of a subsequently ordered
54 duplicate recording shall be \$100.00 per disc (or other media format) and shall be
55 payable to either the clerk of the court or the trial court administrator, as established
56 by local rule, at the time the order is placed.

57 **(c) Copies for Indigent Parties.** In cases involving a party declared to be
58 indigent by the court, the Administrative Office of the Courts, upon request by the
59 trial court, will furnish the trial court with the blank electronic media needed for

60 making any duplicate copy ordered by the indigent party, and no fee will be assessed
61 by the trial court to the indigent party or to the Administrative Office of the Courts.

62 (d) **Use of Duplication Fees.** Revenue derived from the sale of duplicate
63 copies of recordings shall first be applied to the costs incurred by the court in making
64 the duplicate copies, and any remaining revenue may be used to fund the court's
65 other technology related needs.

66 **2.05. Exhibit List and Trial Log.** The trial judge or the judge's designee shall keep a
67 written exhibit list and a log listing the admission of each exhibit and the beginning and end of each
68 witness's testimony by reference to the recording. The automatic logs of all recorded proceedings
69 are to be maintained by the court clerk in an appropriate repository.

70 **2.06. Depositions.** In a court proceeding in which electronic recording equipment is being
71 used to record the proceeding, the official record of a deposition admitted into evidence may be, in
72 the trial judge's discretion, either the transcript of the deposition or the electronic recording of the
73 deposition.

74 **Section 3. Procedure on Filing Notice of Appeal**

75 **3.01. Trial Proceedings.** Upon the filing of a Notice of Appeal in any case in which the trial
76 proceedings have been electronically recorded, the clerk of the court shall, within thirty days of the
77 filing of the Notice of Appeal, file the electronic recording or recordings of the entire trial
78 proceeding, unless otherwise agreed by the parties.

79 **3.02. Pre-Trial and Post-Trial Proceedings.** Within fifteen days after filing the Notice of
80 Appeal, the appellant shall file a designation of any pre-trial or post-trial proceedings to be included
81 in the trial record. The appellee shall have an additional fifteen days to file a designation of any
82 additional proceedings to be included. If any proceeding listed in any designation so filed was not
83 electronically recorded, such designation shall be clearly marked "WRITTEN TRANSCRIPT
84 REQUIRED."

85 **3.03. Clerk's Preparation of Record.** Where the pre-trial or post-trial proceedings listed
86 in any designation so filed were recorded, the clerk of the court shall, within thirty days from the date
87 the designation is filed, file the electronic recording of the designated proceedings or a certified copy
88 thereof. Once all electronic recordings and written transcripts making up the record on appeal have
89 been assembled, each recording and, if applicable, transcript shall be given a volume number in
90 chronological order of the proceedings recorded and transcribed. The clerk of court shall then
91 proceed in accordance with Rule 25, Tennessee Rules of Appellate Procedure.

92 **Section 4. Procedure on Appeal**

93 **4.01. References to Electronic Recordings.** The provisions of Rule 27, Tennessee Rules
94 of Appellate Procedure, shall apply except that reference to a volume of the trial record which is an
95 electronic recording shall be to volume number, month, day, year, hour, minute and second at which
96 the reference begins as recorded on the recording. (For example: “Vol. 2, 10/27/92; 02:24:05p”.)
97 If the recording covers only a single day, the month, day and year may be omitted.

98 **4.02. Optional Appendix to Briefs.** Rule 28, Tennessee Rules of Appellate Procedure,
99 allows the optional filing of an appendix to a party’s appellate brief. Thus, in any case in which the
100 trial court proceeding was electronically recorded pursuant to this Rule 26, a party may include in
101 an appendix a transcript of the evidence or any portion thereof. There shall appear, however, at the
102 beginning of each segment of evidence so transcribed, and at intervals of not greater than ten minutes
103 of court time, a cross-reference to the electronic recording which corresponds to that point of the
104 transcription. (See the example set out in Section 4.01 for the format of such cross-references.)

105 **4.03. Transcription for Appellate Court.** The appellate court, in its discretion, may order
106 the preparation of a transcript of all or any portion of the electronic recording. The transcript shall
107 be prepared and filed with the clerk of the trial court within thirty days from the date it is ordered and
108 shall be approved in accordance with Tenn. R. App. P. 24(f). Within fifteen days after approval, the
109 clerk of the trial court shall prepare and transmit a supplemental record containing the transcript to
110 the clerk of the appellate court. The appellate court, in its discretion, also may order the preparation
111 of supplemental briefs containing references to the transcript pursuant to Tenn. R. App. P. 27(g).
112 The costs of the transcript and the supplemental record shall be taxed by the appellate court in
113 accordance with Tenn. R. App. P. 40.

114 **Section 5. Establishment of Local Procedures**

115 **5.01.** The judges of a judicial district in which electronic recording equipment is used to
116 record court proceedings may, by order, establish further procedures relating to the recording of court
117 proceedings, provided that such procedures do not conflict with the provisions of this rule, with any
118 other rule adopted by the Supreme Court of Tennessee, or with any statute, and further provided that
119 such procedures are approved by the Supreme Court prior to implementation.

[end of Appendix A]

APPENDIX B

PROPOSED REVISED TENN. SUP. CT. R. 26 COMPARED TO TEXT OF CURRENT RULE

[proposed new text indicated by underlining;
proposed deleted text indicated by overstriking]

Rule 26: ~~Order for Use of Videotape Equipment to Record~~. Official Electronic Recordings of Court Proceedings:

Section 1. ~~Scope of Order~~:

1.01. ~~The provisions of this order shall apply~~ This rule applies to any court of record authorized by the Supreme Court of Tennessee to use ~~videotape~~ electronic recording equipment to record court proceedings. *proposed revision*

Section 2. Record of Trial Court Proceedings:

~~2.01. The term "transcript"~~

2.01. Use and Format of Electronic Recordings. The term "transcript" used in Rule 24, Tennessee Rules of Appellate Procedure, shall include ~~a videotape or CD-ROM~~ an official electronic recording of court proceedings recorded and maintained in accordance with ~~the following procedures:~~

~~—(A) Videotape and CD-ROM Recordings.~~ this rule. "Electronic recording" shall include recordings to videotape, CD-ROM, DVD, or similar electronic storage format.

2.02. Electronic Recordings – Official Record. In court proceedings where ~~videotape or CD-ROM~~ electronic recording equipment is available, the official record of court proceedings shall consist of two ~~(2) videotape or CD-ROM~~ electronic recordings, recorded simultaneously, of the proceedings. Upon the filing of a notice of appeal, one of the two ~~(2) videotape or CD-ROM~~ electronic recordings, or a court-certified copy of a portion thereof, ~~recording of~~ the court proceeding being appealed; shall be filed and certified by the clerk as part of the record on appeal. The second ~~videotape or CD-ROM~~ electronic recording shall be retained by the clerk of the trial court.

~~(B)~~ 2.03. Method of Identification.—

~~(1a)~~ Official Recordings. For identification purposes, the clerk shall designate on each of the two ~~(2)~~ official ~~videotape or CD-ROM~~ electronic recordings:

(1) on the first line ~~one~~, the judicial district number, the name of the court, including the division in which the proceeding is being

held, the sequential number of the ~~videotape or CD-ROM~~ recording (counting all ~~videotapes or CD-ROMs used~~ recordings made in that court since the start of the current calendar year), either the letter "A," ~~if "A"~~ (for the ~~videotape or CD-ROM is~~ recording being retained by the court;) or the letter "B," ~~if "B"~~ (for the ~~videotape or CD-ROM is~~ to be recording being filed as part of the record on appeal. ~~);~~);

(2) on the second line, ~~the clerk shall designate~~ the caption and case file number of the proceeding recorded on the ~~videotape or CD-ROM recording~~ (for example: ~~Smith~~ "Smith vs. Jones, No. 93-325") or the nature of the proceedings before the court if those proceedings pertain to more than one case (for example: criminal motions involving more than one defendant). ~~); and~~

(3) on the third line, ~~the clerk shall designate~~ the date on which the ~~videotape or CD-ROM~~ recording was recorded in the form: MM/DD/YY.

(2b) Certified ~~Copies~~ Copy of Partial Official Recording. If a court-certified copy of a portion of any ~~tape or CD-ROM~~ recording is prepared for filing as a part of the record on appeal, the clerk shall designate on the partial recording:

(1) on the first line ~~will be marked with~~, the judicial district number, the name of the court, including the division in which the proceeding is being held, and the word ~~"copy."~~ "copy";

(2) on the second line ~~will contain~~, the caption of the case being appealed, the case file number, and the number of the source ~~videotape or CD-ROM used to make~~ recording from which the copy: ~~T~~ was made; and

(3) on the third line ~~will contain~~, the date on which the source ~~videotape or CD-ROM~~ recording was recorded.

2.04. Duplicate Copies of Electronic Recordings.

(3a) ~~Simultaneously Made and Simultaneous~~ Duplicate Copies. A party to any court proceeding may order, in advance, a simultaneously made ~~copy~~ duplicate of the electronic recording being made of the proceeding. ~~The cost of a simultaneously made videotape or CD-ROM shall be \$15.00 per tape or CD-ROM payable to~~ simultaneous duplicate recording shall be \$50.00 per disc (or other media

format) and shall be payable to either the clerk of the appropriate court or the trial court administrator, as established by local rule, at the time the order is placed. ~~F~~

(b) Subsequent Duplicate Copies. A party to any court proceeding may order, subsequent to the time a proceeding was recorded, a duplicate copy of the electronic recording for use in preparing an appeal or in preparing for subsequent proceedings. Upon any order for a subsequent duplicate recording, the court shall arrange for the recording of the duplicate ~~copies of videotapes or CD-ROMs for use by counsel in preparing an appeal or subsequent proceedings. The clerk shall collect from the person requesting a duplicate videotape or CD-ROM a fee of \$30.00 for each duplicate videotape or CD-ROM requested.~~(s). The cost of a subsequently ordered duplicate recording shall be \$100.00 per disc (or other media format) and shall be payable to either the clerk of the court or the trial court administrator, as established by local rule, at the time the order is placed.

(c) Copies for Indigent Parties. In cases involving ~~parties~~ a party declared to be indigent by the ~~C~~ court, the Administrative Office of the Courts, upon request by the trial court, will furnish the ~~tapes or CD-ROMs for duplication~~ trial court with the blank electronic media needed for making any duplicate copy ordered by the indigent party, and no fee will be assessed by the trial court to the indigent party or to the Administrative Office of the Courts.

(d) Use of Duplication Fees. Revenue derived from the sale of duplicate copies of recordings shall first be applied to the costs incurred by the court in making the duplicate copies, and any remaining revenue may be used to fund the court's other technology related needs.

~~(E)~~ **2.05. Exhibit List and Trial Log.** The trial judge or ~~his/her~~ the judge's designee shall keep a written exhibit list and a log listing the admission of each exhibit and the beginning and end of each witness's testimony by reference to the ~~videotape or CD-ROM recording.~~ The automatic logs of all ~~video or CD-ROM~~ recorded proceedings are to be maintained by the court clerk in an appropriate repository.

~~(D)~~ **2.06. Depositions.** In a court proceeding in which ~~videotape or CD-ROM~~ electronic recording equipment is being used to record the proceeding, the official record of a deposition admitted into evidence may be, in the trial judge's discretion, either the transcript of the deposition or the ~~videotape or CD-ROM~~ electronic recording of the deposition.

See: Section 3. Procedure on Filing Notice of Appeal.

3.01. Trial Proceedings. Upon the filing of a Notice of Appeal in any case in which the trial proceedings have been ~~videotape or CD-ROM~~ electronically recorded, the clerk of the court shall, within thirty ~~(30)~~ days ~~cause of to be filed~~ the filing of the ~~videotape or CD-ROM~~ Notice of Appeal,

file the electronic recording or recordings of the entire trial proceeding, unless otherwise agreed by the parties. _

3.02. Pre-Trial and Post-Trial Proceedings. Within fifteen ~~(15)~~ days after filing the Notice of Appeal, ~~any party to the~~ action ~~appellant~~ shall ~~cause to be filed~~ a designation of any pre-trial or post-trial proceedings to be included in the trial record. ~~If any party files such a designation, all other parties to t~~ The action ~~appellee~~ shall have an additional fifteen ~~(15)~~ days to file a designation of any additional proceedings to be included. If any proceeding listed in any designation so filed was not ~~videotaped or CD-ROM~~ electronically recorded, such designation shall be clearly marked ~~"WRITTEN"~~ "WRITTEN TRANSCRIPT REQUIRED." _

3.03. Clerk's Preparation of Record. Where the pre-trial or post-trial proceedings listed in any designation so filed were recorded, the clerk of the court shall, within thirty ~~(30)~~ days from the date the designation is filed, ~~cause to be filed~~ the ~~videotape or CD-ROM~~ electronic recording of the designated proceedings or a certified copy thereof. Once all ~~videotapes or CD-ROMs or combination of videotapes or CD-ROMs~~ electronic recordings and written transcripts; making up the record on appeal; have been assembled, each ~~tape or CD-ROM or recording and, if applicable,~~ transcript ~~will~~ shall be given a volume number in chronological order of the proceedings recorded and transcribed. The clerk of court shall then proceed in accordance with Rule 25, Tennessee Rules of Appellate Procedure.

See: Section 4. Procedure on Appeal:

4.01. ~~(A)~~ References to ~~Videotape or CD-ROM~~ Electronic Recordings. The provisions of Rule 27, Tennessee Rules of Appellate Procedure, shall apply except that reference to a volume of the trial record which is a ~~videotape or CD-ROM~~ in electronic recording shall be to volume number, month, day, year, hour, minute and second at which the reference begins as recorded on the ~~videotape or CD-ROM~~ recording. (For example: ~~(Vol~~ "Vol. 2, 10/27/92; 02:24:05p"). If the recording covers only a single day, the month, day and year may be omitted.

~~(B) Evidentiary~~ **4.02. Optional Appendix to Briefs.** Rule 28, Tennessee Rules of Appellate Procedure, ~~allowing~~ allows the optional filing of an appendix to a party's appellate brief. Thus, in any case in which the trial court proceeding was electronically recorded pursuant to this Rule 26, a party may include in an appendix a transcription ~~transcript~~ of the evidence ~~in the form of an appendix attached to an appellate brief, remains in effect.~~ or any portion thereof. There shall appear, however, at the beginning of each segment of evidence so transcribed, and at intervals of not greater than ten minutes of court time, a ~~videotape or CD-ROM~~ reference ~~cross-reference to the electronic recording~~ which corresponds to that point of the transcription. (See the example set out in Section 4.01 for the format of such cross-references.)

~~(C)~~ **4.03. Transcription for Appellate Court.** The appellate court, in its discretion, may order the preparation of a transcript of all or any portion of the ~~videotape or CD-ROM~~ electronic recording. The transcript shall be prepared and filed with the clerk of the trial court within thirty ~~(30)~~

days from the date it is ordered and shall be approved in accordance with Tenn. R. App. P. 24(f). Within fifteen ~~(15)~~ days after approval, the clerk of the trial court shall prepare and transmit a supplemental record containing the transcript to the clerk of the appellate court. ~~The appellate court may also~~, in its discretion, also may order the preparation of supplemental briefs containing references to the transcript ~~required by~~ pursuant to Tenn. R. App. P. 27(g). The costs of the transcript and the supplemental record shall be taxed by the appellate court ~~consistently~~ in accordance with Tenn. R. App. P. 40.

See: Section 5. Establishment of Local Procedures:

5.01. The judges of a judicial district in which ~~the videotape or CD-ROM~~ electronic recording equipment is used to record court proceedings may, by order, establish further procedures relating to ~~videotape or CD-ROM recordation~~ the recording of court proceedings, provided that such procedures do not conflict with the provisions of this order rule, ~~statutory provisions or with any other~~ rules adopted by the Supreme Court of Tennessee, or with any statute, and further provided, ~~further~~, that such procedures are approved by the Supreme Court prior to implementation.

[end of Appendix B]