



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: AMENDMENTS TO THE TENNESSEE RULES
OF PROCEDURE & EVIDENCE**

No. M2012-01977-SC-RL2-RL - Filed: September 19, 2012

ORDER

The Advisory Commission on the Rules of Practice & Procedure annually presents recommendations to the Court to amend the Tennessee Rules of Appellate, Civil, Criminal, and Juvenile Procedure and the Tennessee Rules of Evidence. In August 2012, the Advisory Commission completed its 2011-2012 term and presented its recommendations to the Court. After considering the amendments recommended by the Commission, the Court hereby publishes for public comment the proposed amendments set out in the Appendix to this order.

The Court hereby solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is Friday, November 30, 2012. Written comments should be addressed to:

Mike Catalano, Clerk
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, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, the order and Appendix shall be posted on the Tennessee Supreme Court's website.

PER CURIAM

APPENDIX

***PROPOSED AMENDMENTS
PUBLISHED FOR PUBLIC COMMENT***

FORMATTING NOTE:

**Attached are “redlined” versions of the proposed amended rules.
New text is indicated by underlining, and deleted text is indicated by overstriking.**

1 TENNESSEE RULES OF APPELLATE PROCEDURE

2 RULE 3

3 APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION

4 [Amend Rule 3(b) and (c) by adding the underlined text and deleting the overstricken text below;
5 paragraphs (a) and (d) - (g) are unchanged:]

6 (a) * * * *

7 (b) Availability of Appeal as of Right by Defendant in Criminal Actions. – In criminal
8 actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial
9 court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea
10 of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea
11 agreement but explicitly reserved the right to appeal a certified question of law dispositive of the
12 case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the
13 Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there
14 was no plea agreement concerning the sentence, or if the issues presented for review were not
15 waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent
16 from the record of the proceedings already had. The defendant may also appeal as of right from an
17 order denying or revoking probation, an order or judgment entered pursuant to Rule 36 or Rule 36.1,
18 Tennessee Rules of Criminal Procedure, ~~and~~ from a final judgment in a criminal contempt, habeas
19 corpus, extradition, or post-conviction proceeding, and from a final order denying a request for
20 expunction.

21 (c) Availability of Appeal as of Right by the State in Criminal Actions. – In criminal actions
22 an appeal as of right by the state lies only from an order or judgment entered by a trial court from
23 which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) the substantive effect
24 of which results in dismissing an indictment, information, or complaint; (2) setting aside a verdict
25 of guilty and entering a judgment of acquittal; (3) arresting judgment; (4) granting or refusing to
26 revoke probation; or (5) remanding a child to the juvenile court. The state may also appeal as of
27 right from a final judgment in a habeas corpus, extradition, or post-conviction proceeding, ~~or~~ from
28 an order or judgment entered pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal
29 Procedure, and from a final order denying a request for expunction.

30 (d) * * * *

proposed

31 *Advisory Commission Comment [2013]*

32 Tenn. R. Crim. P. 36.1 was adopted in 2013 to provide a mechanism for the defendant or the
33 State to seek to correct an illegal sentence. With the adoption of that rule, this rule (Tenn. R. App.
34 P. 3) was amended to provide for an appeal as of right, by either the defendant (see paragraph 3(b))
35 or the State (see paragraph 3(c)), from the trial court's ruling on a motion filed under Tenn. R. Crim.
36 P. 36.1 to correct an illegal sentence.

37 Paragraphs (b) and (c) also were amended to permit appeals as a matter of right for the
38 defendant and the State in expunction requests. The amendments were designed to address the
39 decision in *State v. Adler*, 92 S.W.3d 397 (Tenn. 2002), which held that rulings on expunction
40 requests could only be appealed by use of the writ of certiorari, pursuant to Tenn. Code Ann. § 27-8-
41 101 (2000). Since these matters can be appealed, they now are included under Tenn. R. App. P. 3
42 as a matter that can be appealed as of right.

43 TENNESSEE RULES OF APPELLATE PROCEDURE

44 RULE 4

45 APPEAL AS OF RIGHT: TIME FOR FILING NOTICE OF APPEAL

46 [Amend Tenn. R. App. P. 4(e) by adding the underlined text below:]

47 **(a) Generally.** — * * * *

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

59 *Advisory Commission Comment [2013]*

60 Subparagraph (e) of the rule is amended to clarify that a trial court does not lose jurisdiction
61 to rule upon a motion referred to in subparagraph (b) or (c) if the motion was filed within the time
62 permitted by the applicable rule. A notice of appeal filed prior to the timely filing of one of the
63 listed motions, or prior to the court’s ruling on the motion, is deemed to be premature and does not
64 deprive the court of jurisdiction to rule upon the motion.

65 TENNESSEE RULES OF APPELLATE PROCEDURE

66 RULE 6

67 SECURITY FOR COSTS ON APPEAL

68 [Amend Tenn. R. App. P. 6(b) by adding the underlined text and deleting the overstricken text
69 below:]

70 (a) * * * *

71 (b) Unless an appellant is exempted by statute or has filed an affidavit of indigency and been
72 permitted to proceed on appeal as ~~a poor~~ an indigent person, the appellant shall pay to the clerk of
73 the appellate court all applicable litigation taxes upon receipt of the notice of docketing of the appeal
74 pursuant to Rule 5(c). If the appellant fails to pay the litigation tax, the appellate court may issue
75 an order requiring the appellant to show cause why the appeal should not be dismissed for failure
76 to pay the litigation tax.

77 (c) * * * *.

78 *Advisory Commission Comment [2013]*

79 Paragraph (b) of the rule was amended to replace the term “poor person” with the term
80 “indigent person.” The amendment was not intended to change the meaning or application of the
81 rule.

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TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 11

APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT

[Amend Tenn. R. App. P. 11(b), (d), and (f) by adding the underlined text and deleting the overstricken text 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

103 of: (1) the date on which the judgment was entered and whether a petition for rehearing was filed,
104 and if so, the date of the denial of the petition or the date of entry of the judgment on rehearing; (2)
105 the questions presented for review and, for each question presented, a concise statement of the
106 applicable standard of review (which may appear in the discussion of the issue or under a separate
107 heading placed before the discussion of the issues); (3) the facts relevant to the questions presented,
108 but facts correctly stated in the opinion of the intermediate appellate court need not be restated in
109 the application; and (4) the reasons, including appropriate authorities, supporting review by the
110 Supreme Court. Except by order of the Supreme Court, the argument in an application for
111 permission to appeal shall not exceed 50 pages. The brief of the appellant referred to in subdivision
112 (f) of this rule may be served and filed with the application for permission to appeal. A copy of the
113 opinion of the appellate court shall be appended to the application.

114 (c) Number of Copies; Service. — The original and six copies of the application shall be
115 filed. The application shall be served on all other parties in the manner provided in Rule 20 for the
116 service of papers.

117 (d) Answer; Reply. — Within 15 days after filing of the application, any other party may file
118 an answer in opposition, with copies in the number required for the application. An answer shall
119 set forth the reasons why the application should not be granted and any other matters considered
120 necessary for correction of the application. Except by order of the Supreme Court, the argument in
121 an answer in opposition shall not exceed 25 pages. The answer shall be served on all other parties
122 in the manner provided in Rule 20 for the filing of papers. No reply to the answer shall be filed.

123 (e) Action on Application. — The application shall be granted if two members of the
124 Supreme Court are satisfied that the application should be granted. The appeal shall be docketed
125 in accordance with Rule 5(c) upon entry of the order granting permission to appeal.

126 (f) Briefs. — If permission to appeal is granted, the appellant shall serve and file his or her
127 brief within 30 days after the date on which permission to appeal was granted. If the appellant files
128 a brief with the application for permission to appeal as provided in subdivision (b) of this rule, he
129 or she may also file a supplemental brief, which shall likewise be served and filed within 30 days
130 after the date on which permission to appeal was granted. Except by order of the Supreme
131 Court~~appellate court or a judge thereof~~, the argument in a supplemental brief shall not exceed 25
132 pages. If available, the color of the cover of a supplemental brief shall be blue. An appellant who
133 elects not to file a supplemental brief shall, within 30 days after the date on which permission to
134 appeal was granted, file with the clerk of the appellate court and serve on the appellee notice of the
135 appellant's election not to file a supplemental brief; if the appellant fails to file a notice within 30
136 days, the appellee's time runs from the 30th day after permission to appeal was granted.

137 The appellee shall serve and file a brief within 30 days after filing of the brief or
138 supplemental brief of the appellant or appellant's notice of election not to file a supplemental brief.

139 Reply briefs shall be served and filed within 14 days after filing of the preceding brief.

140 The briefs shall conform with the requirements of Rule 27.

141 (g) Appeal in Criminal Actions. — Permission to appeal under this rule may be sought by
142 the state and defendant in criminal actions.

143 (h) Grant of Permission; Cost Bond. — In civil cases, if application for permission to appeal
144 is made by the appellee in the Court of Appeals and there is no appeal bond for costs with sufficient
145 surety filed by the appealing party in the Court below, the appealing party must file an appeal bond
146 for costs with sufficient surety in the amount of \$1000. If this amount is deemed insufficient to
147 cover the costs on appeal the Court may require an additional bond in an amount the Court deems
148 sufficient to cover the cost of appeal. If application for permission to appeal is made by the
149 appellant in the Court of Appeals and the appeal bond is insufficient to cover the cost of appeal, the
150 Court may require the appealing party to file an additional bond in an amount the Court deems
151 sufficient to cover the cost of appeal.

152 *proposed*
Advisory Commission Comment [2013]

153 Paragraphs (b) and (d) were amended to provide that the argument section of an application
154 for permission to appeal cannot exceed 50 pages and that the argument section of an answer in
155 opposition cannot exceed 25 pages, unless otherwise ordered by the Supreme Court. The third
156 sentence of paragraph (f) was amended to replace “appellate court or a judge thereof” with
157 “Supreme Court,” thereby making that sentence consistent with the amended language in paragraphs
158 (b) and (d).

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TENNESSEE RULES OF APPELLATE PROCEDURE

160

RULE 18

161

APPEALS BY ~~POOR~~ INDIGENT PERSONS

162 [Amend Tenn. R. App. P. 1 by adding the underlined text and deleting the overstricken text below
163 and by amending the title, as set out above:]

164 (a) Parties Previously Permitted to Proceed as ~~Poor~~ Indigent Persons in the Trial Court. —

165 A party who has been permitted to proceed in an action in the trial court as a ~~poor~~ an indigent person

166 (which includes a person who has been permitted to proceed there as one who is financially unable

167 to obtain adequate defense in a criminal case) may proceed on appeal as a ~~poor~~ an indigent person

168 unless, before or after the appeal is taken, the trial court finds the party is not entitled so to proceed,

169 in which event the trial court shall state in writing the reasons for such finding.

170 (b) Leave to Proceed as a ~~Poor~~ an Indigent Person on Appeal. — Except as provided in (a),

171 a party to an action in the trial court who desires to proceed as a ~~poor~~ an indigent person on appeal

172 shall seek leave so to proceed in the trial court. If leave to proceed as a ~~poor~~ an indigent person is

173 granted, the party may proceed without further application in the appellate court and without

174 prepayment of fees or costs in either court or the giving of security therefor. If leave is denied, the

175 trial court shall state in writing the reasons for the denial.

176 (c) Subsequent Proceedings on Denial of Leave to Proceed as a ~~Poor~~ an Indigent Person. —

177 If leave to proceed as a ~~poor~~ an indigent person is denied, or the trial court finds that the party is not

178 entitled so to proceed, the clerk of the trial court shall forthwith serve notice of such action. A

179 motion for leave to proceed as a ~~poor~~ an indigent person may be filed in the appellate court within
180 30 days after service of notice of the action of the trial court. The motion shall be accompanied by
181 copies of the papers filed in the trial court seeking leave to proceed as a ~~poor~~ an indigent person and
182 by a copy of the statement of reasons given by the trial court for its action.

183 (d) Motion in an Appellate Court for Leave to Proceed as a ~~Poor~~ an Indigent Person on
184 Appeal. — If a party to an action on appeal is unable to bear the expenses of the appeal due to
185 poverty, but that party has not sought leave from the trial court to proceed on appeal as a ~~poor~~ an
186 indigent person, or that party becomes indigent during the appeal, the party may seek leave from the
187 appellate court to proceed on appeal as a ~~poor~~ an indigent person. A motion for leave to proceed on
188 appeal as a ~~poor~~ an indigent person filed in the appellate court shall be accompanied by a Uniform
189 Affidavit of Indigency as set forth in Supreme Court Rule 13 (criminal cases) or by a Uniform Civil
190 Affidavit of Indigency as set forth in Supreme Court Rule 29 (civil cases). If leave to proceed as a
191 ~~poor~~ an indigent person is denied by an intermediate appellate court, the appellate court shall state
192 in writing the reasons for the denial.

193 (e) Subsequent Proceedings on Denial by an Intermediate Appellate Court of Leave to
194 Proceed as a ~~Poor~~ an Indigent Person on Appeal. — If leave to proceed as a ~~poor~~ an indigent person
195 is denied by an intermediate appellate court, or an intermediate appellate court finds that the party
196 is not entitled so to proceed, the clerk of the appellate courts shall forthwith serve notice of such
197 action. A motion for leave to proceed as a ~~poor~~ an indigent person may thereafter be filed in the
198 Supreme Court within 15 days after service of notice of the action of the intermediate appellate
199 court. The motion shall be accompanied by copies of any papers filed in the trial and appellate courts

200 seeking leave to proceed as ~~a poor~~ an indigent person and by a copy of the statement of reasons
201 given by the trial and intermediate appellate courts for their actions.

202 (f) Appointment of Counsel in Criminal Actions. — In a criminal action, on overruling a
203 motion for a new trial or in arrest of judgment, whichever is later, the trial court shall advise the
204 defendant and appoint counsel on appeal as provided in rule 37(c) of the Tennessee Rules of
205 Criminal Procedure.

206 *Advisory Commission Comment [2013]*

207 The rule was amended to replace the term “poor” person(s) with the term “indigent”
208 person(s). The amendment was not intended to change the meaning or application of the rule.

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TENNESSEE RULES OF APPELLATE PROCEDURE

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RULE 30

211

FORM OF BRIEFS AND OTHER PAPERS

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[Amend Tenn. R. App. P. 30(a) by adding the underlined text and deleting the overstricken text below:]

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(a) Production Methods; Paper. — Briefs, transcripts or statements, applications, answers

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in opposition, petitions, motions, supporting papers, and objections should be produced on opaque,

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unglazed white paper by any printing, duplicating, or copying process that provides a clear black

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image. The use of recycled paper with the highest feasible percentage of postconsumer waste

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content is recommended and encouraged. Original typewritten pages may be used, but not carbon

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copies except on behalf of parties allowed to proceed as poor indigent persons. All printed matters

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should be on paper 61/8 by 91/4 inches in type not smaller than 11 point and type matter 41/4 by

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71/4 inches. If not printed, copies should be on paper 81/2 by 11 inches, double spaced, except for

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quoted matter, which may be single spaced, with the text (1) when typewriter generated not smaller

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than standard elite type or (2) when computer generated not smaller than times new roman 12 point

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font and, in either event, not to exceed 61/2 by 91/2 inches on the page. Papers should be numbered

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on the bottom and fastened on the left.

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(b) * * * *

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Advisory Commission Comment [2013]

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Paragraph (a) of the rule was amended to replace the term “poor persons” with the term

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“indigent persons.” The amendment was not intended to change the meaning or application of the

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rule.

231 TENNESSEE RULES OF CIVIL PROCEDURE

232 RULE 2

233 ONE FORM OF ACTION

234 [Add the new Advisory Commission Comment below; the text of the Rule is unchanged:]

235 All actions in law or equity shall be known as “civil actions.”

236 *Advisory Commission Comment [2013]*

237 The 2013 Advisory Commission Comment to Tenn. R. Civ. P. 3 provides guidance for
238 determining whether a statutorily authorized “petition” is considered a “complaint” or a “motion”
239 for purposes of the Rules of Civil Procedure.

proposed

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TENNESSEE RULES OF CIVIL PROCEDURE

241

RULE 3

242

COMMENCEMENT OF ACTION

243

[Add the new Advisory Commission Comment below; the text of the Rule is unchanged:]

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All civil actions are commenced by filing a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. If process remains unissued for 90 days or is not served within 90 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

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Advisory Commission Comment [2013]

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Rule 2 provides that “[a]ll actions in law or equity shall be known as ‘civil actions.’” The initial Advisory Commission Comment to Rule 2 explains that, “[p]rior to adoption of these Rules, Tennessee practice spoke of ‘civil actions at law’ (Tenn. Code Ann. § 20-2010 [repealed] and of ‘suits’ in chancery (Tenn. Code Ann. § 21-102) [repealed]. Rule 2 simplifies the terminology of applying a single term to all civil actions.” Consistent with that explanation, Rule 3 goes on to provide (in pertinent part) that “[a]ll civil actions are commenced by filing a *complaint* with the clerk of the court.” (Emphasis added.)

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Although Rules 2 and 3 simplified the terminology previously applied to “civil actions at law” and “suits” in chancery, those rules—as well as Rule 7—are silent as to their application to “petitions” authorized by statute. *See, e.g.*, Tenn. Code Ann. §§ 4-5-322 (2011) (petition for judicial review under Administrative Procedures Act); 4-21-307 (2011) (petition for judicial review

264 of order of Human Rights Commission); 27-8-106 (2000) (petition for writ of certiorari); 29-3-103
265 (2000) (“bill or petition” to abate a public nuisance); 29-16-104 (2000) (petition to take land by
266 eminent domain); 29-27-106 (2000) (“bill or petition” for partition); 30-1-117 (“verified petition”
267 to apply for letters of administration or letters testamentary to administer the estate of a decedent);
268 34-3-102 (2007) (petition for appointment of a conservator); 36-3-602 (2010) (petition for order of
269 protection); 36-5-405 (2010) (petition to set, enforce, modify or terminate support); 36-6-108
270 (2010) (petition to alter visitation/parental relocation); 36-6-306 (2010) (petition for grandparent
271 visitation); and 36-6-405 (2010) (petition to modify permanent parenting plan). Depending on the
272 nature of a statutorily authorized “petition,” the petition might be considered a “complaint” for
273 purposes of these Rules, or it might be considered a motion relating to a pending civil action. In
274 determining whether or not a statutorily authorized petition is a “complaint” for purposes of these
275 Rules, the court must give effect to the substance of the pleading, rather than its form. *See, e.g.,*
276 *Brundage v. Cumberland Cnty.*, 357 S.W.3d 361, 371 (Tenn. 2011); *Abshure v. Methodist*
277 *Healthcare-Memphis Hosp.*, 325 S.W.3d 98, 104 (Tenn. 2010); *Ferguson v. Brown*, 291 S.W.3d
278 381, 386-87 (Tenn. Ct. App. 2008). As the Supreme Court has stated, “a trial court is not bound by
279 the title of the pleading, but has the discretion to treat the pleading according to the relief sought.”
280 *Norton v. Everhart*, 895 S.W.2d 317, 319 (Tenn. 1995).

proposed

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TENNESSEE RULES OF CIVIL PROCEDURE
RULE 3A
ENFORCEMENT OF FOREIGN JUDGMENTS

[Add new Rule 3A – which is a separate rule from Rule 3 – as set out below:]

3A.01. Enrollment of Foreign Judgments. — Enrollment of a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act, T.C.A. §26-6-104, does not require filing of a complaint, but shall be by

(1) Filing with the clerk of the Circuit Court or the Clerk & Master of the Chancery Court, a copy of a foreign judgment authenticated in accordance with the Acts of Congress or the statutes of this state;

(2) Filing an Affidavit executed by the judgment creditor or the judgment creditor's lawyer, setting forth the name and last known post office address of the judgment debtor and the judgment creditor;

(3) Filing a Notice of Filing that provides a description of the judgment creditor, judgment debtor, name and last known post office address of the judgment debtor and the judgment creditor and notice that the judgment creditor is enrolling a foreign judgment in Tennessee; and

(4) Paying the appropriate filing fee to the Clerk for opening a miscellaneous

299 file.

300 **3A.02. Notice of Filing.** — The following form of Notice of Filing, when completed,
301 provides sufficient information to comply with the notice required under 3A.01(3) above;

302 IN RE PROCEEDING TO ENFORCE JUDGMENT AGAINST
303 [INSERT NAME OF JUDGMENT DEBTOR]

304

305

306

NOTICE OF FILING

307

308

Judgment creditor [insert name of judgment creditor] hereby gives
309 notice that he/she/it is enrolling a foreign judgment in Tennessee
310 pursuant to the Uniform Enforcement of Foreign Judgments Act.

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312

The following documents are attached in support of this notice:

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(a) A copy of a foreign judgment authenticated in accordance
with the Acts of Congress or the statutes of this state.

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(b) An Affidavit executed by the judgment creditor or the
judgment creditor's attorney, setting forth the name and last known
post office address of the judgment debtor and the judgment creditor.

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C O S T B O N D

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I hereby acknowledge and bind myself for the prosecution of
this action and payment of all costs in this court which may at any
time be adjudged against the plaintiff in the event said plaintiff shall
not pay the same.

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324

Witness my hand this ____ day of _____
, 20__.

325

326

Surety

327

328 Address

329 **3A.03. Clerk's Duties.** — On receipt of the copy of the foreign judgment, the Notice of
330 Filing, and the affidavit, the clerk shall:

331 (1) Promptly open a case number file, and

332 (2) Issue a summons to be delivered for service to any person authorized to
333 serve process for service upon the judgment debtor, including providing a copy of
334 the Notice of Filing to be served upon the judgment debtor with the copy of the
335 foreign judgment authenticated in accordance with the Acts of Congress or the
336 statutes of this state and the Affidavit filed by the judgment creditor or the judgment
337 creditor's lawyer.

338 **3A.04. Enrollment and Execution.** — If the judgment debtor does not file a response or
339 answer within thirty (30) days after service, the Clerk shall

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341 (1) Enroll the judgment; and

342 (2) Upon the filing of a request for execution, issue the execution, by
343 garnishment, attachment, or as otherwise requested, without requiring further order
344 from the Court.

345

Advisory Commission Comment [2013]

346 Tennessee trial courts have not followed a uniform procedure in enrolling and enforcing
347 foreign judgments. Some trial courts have considered that a complaint or motion for default is
348 necessary under the Rules of Civil Procedure to enroll or enforce by execution a domesticated
349 foreign judgment, despite the adoption of the Uniform Enforcement of Foreign Judgments Act,
350 Tenn. Code Ann. §§ 26-6-104 – 108 (2000 & Supp. 2011). The Act's purpose to streamline the
351 procedure for enrolling and enforcing foreign judgments is hampered by courts' uncertainty whether
352 enrolling a foreign judgment should be treated as commencing a civil action, requiring
353 commencement by a complaint and, upon lack of response by the judgment debtor after service,
354 requiring entry of a default upon proper motion.

355 Rule 3A has been adopted to insure that trial courts follow the same process throughout the
356 state. It makes clear that where a foreign judgment is enrolled pursuant to the Act and is undisputed,
357 no complaint is necessary to enroll the judgment or issue execution upon it. Similarly, no motion
358 for default or entry of default judgment is necessary before execution may issue. *See also* Advisory
359 Commission Comment [2013] to Tenn. R. App. P. 55.

360 If a judgment debtor does dispute the Notice of Filing Foreign Judgment, Tennessee's
361 Uniform Enforcement of Foreign Judgments Act entitles the debtor to a trial on the merits
362 concerning the underlying validity of the judgment, and the Tennessee Rules of Civil Procedure
363 govern the trial on the merits on that answer and response.

[Editorial note: this form summons shall be published as an appendix to Tenn. R. Civ. P. 3A:]

364 STATE OF TENNESSEE
365 In the _____ Court of _____ County

366 _____, Plaintiff(s),

367 vs.

368 _____, Defendant(s)

369 No. _____

370 SUMMONS for ENFORCEMENT OF FOREIGN JUDGMENT

371 TO: _____
372 Defendant Address

proposed

373 _____
374 Defendant Address

375 You are hereby notified that a judgment creditor has filed in the _____ Court of
376 _____ County, Tennessee in the above styled case a judgment entered against you in another
377 state. If you object to entry of this judgment or the foreign judgment is on appeal, you must file a
378 response or answer objecting to the enrollment of this judgment in the office of the _____
379 Court Clerk of _____ County, Tennessee on or before thirty (30) days after service of this
380 summons upon you. If you fail to do so, the Clerk may issue execution on the foreign judgment
381 against you.

382 WITNESSED and Issued this _____ day of _____, 20____.

383 _____, _____ Court Clerk

384
385 By _____, Deputy Clerk

386 ATTORNEYS FOR PLAINTIFF: _____

387 PLAINTIFF'S ADDRESS: _____

388 Received this _____ day of _____, 20____

389
390

By: _____
Deputy Sheriff

391
392

State of Tennessee
County of _____

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395

I, _____, Clerk of the _____ Court, in and for the State and County aforesaid, hereby certify that the within and foregoing is a true and correct copy of the original writ of summons issued in this case.

396

_____, _____ Court Clerk

397

By _____, D.C.

398

proposed
OFFICER'S RETURN

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400

I certify that I served this summons together with the foreign judgment, notice of filing of foreign judgment, and affidavit of the judgment creditor as follows:

401
402
403
404

On _____, 20____, I delivered a copy of the summons, enrolled foreign judgment, and creditor's affidavit to the defendant, _____

405
406

Failed to serve this summons within 30 days after its issuance because: _____

407
408
409

_____, Sheriff
_____, Deputy Sheriff

410

CLERK'S RETURN

411
412

I hereby acknowledge and accept service of the within summons and receive copy of same, this _____ day of _____, 20____.

413
414
415

Defendant

416

_____, _____ Court Clerk

417

By _____, D.C.

418

419

NOTICE TO DEFENDANT(S)

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Tennessee law provides a ten thousand (\$10,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt, with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

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TENNESSEE RULES OF CIVIL PROCEDURE
RULE 7
PLEADINGS ALLOWED; FORM OF MOTIONS

[Add the new Advisory Commission Comment below; the text of the Rule is unchanged:]

7.01. Pleadings. — There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or to a third-party answer.

proposed

7.02. Motions and Other Papers. — (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

7.03. Demurrers, Pleas, etc., Abolished. — Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

449

Advisory Commission Comment [2013]

450 The 2013 Advisory Commission Comment to Tenn. R. Civ. P. 3 provides guidance for
451 determining whether a statutorily authorized “petition” is considered a “complaint” or a “motion”
452 for purposes of the Rules of Civil Procedure.

proposed

453

TENNESSEE RULES OF CIVIL PROCEDURE

454

RULE 45

455

SUBPOENA

456 [Amend Rule 45 by adding the underlined text and deleting the overstricken text below; the
457 Advisory Commission Comments to Rule 45 are unchanged, except a new sentence is added to the
458 2012 Comment to Rule 45.01, and new 2013 Comments are added, as set out below:]

459 **45.01. For Attendance of Witnesses; Form; Issuance.** Every subpoena shall be issued
460 by the clerk, shall state the name of the court and the title of the action, and shall command each
461 person to whom it is directed to attend and give testimony at the time and place and for the party
462 therein specified. ~~The subpoena also must state in prominently displayed, bold-faced text: “The~~
463 ~~failure to file a motion to quash or modify within fourteen days of service of the subpoena waives~~
464 ~~all objections to the subpoena, except the right to seek the reasonable cost for producing books,~~
465 ~~papers, documents, electronically stored information, or tangible things.”~~ The clerk shall issue a
466 subpoena or a subpoena for the production of documentary evidence, signed but otherwise in blank,
467 to a party requesting it, who shall fill it in before service.

468 **45.02. For Production of Documents and Things or Inspection of Premises. * * * ***

469 **45.03. Service. * * * ***

470 **45.04. Subpoena for Taking Depositions — Place of Deposition.** (1) A subpoena for
471 taking depositions may be issued by the clerk of the court in which the action is pending. A

472 subpoena for taking depositions may be served at any place within the state. If the subpoena
473 commands the person to whom it is directed to produce designated books, papers, documents,
474 electronically stored information, or tangible things which constitute or contain evidence relating
475 to any of the matters within the scope of the examination permitted by Rule 26.02, the subpoena will
476 be subject to the provisions of Rules 30.02, 37.02, ~~and 45.02,~~ and 45.07. A deposition subpoena for
477 testimony or subpoena for production of documentary evidence also must state in prominently
478 displayed, bold-faced text: “The failure to serve an objection to this subpoena within twenty-one
479 days after the day of service of the subpoena waives all objections to the subpoena, except the right
480 to seek the reasonable cost for producing books, papers, documents, electronically stored
481 information, or tangible things.”

proposed

482 (2) A resident of the state may be required to give a deposition only in the county ~~wherein~~
483 where the person resides or is employed or transacts his or her business in person, or at such other
484 convenient place as is fixed by an order of the court.

485 **45.05. Subpoena for a Hearing or Trial — Personal Attendance. * * * ***

486 **45.06. Contempt. * * * ***

487 **45.07. Protection of Persons Subject to Subpoena.** ~~Upon motion made within fourteen~~
488 ~~days after the subpoena is served or before the time specified in the subpoena for compliance~~
489 ~~therewith, whichever is earlier, the Court may: (1) quash or modify the subpoena if it is~~
490 ~~unreasonable and oppressive; or (2) condition denial of the motion upon the advancement by the~~

491 ~~person in whose behalf the subpoena is issued of the reasonable costs of producing the books,~~
492 ~~papers, documents, electronically stored information, or tangible things. The timely filing of a~~
493 ~~motion to quash or modify obviates the need for compliance with the subpoena pending further~~
494 ~~order of the court. The failure to file a motion within the time period specified herein waives all~~
495 ~~objections to the subpoena except the right to seek the reasonable costs for producing books, papers,~~
496 ~~documents, electronically stored information, or tangible things.~~

497 (1) A party or attorney responsible for issuing and serving a subpoena must take reasonable
498 steps to avoid imposing undue burden or expense on a non-party witness subject to the subpoena and
499 shall provide the non-party witness at least twenty-one (21) days after service of the subpoena to
500 respond, absent agreement of the non-party witness or a court order.

501 (2) A non-party witness commanded to give deposition testimony or to produce documents
502 or tangible things or to permit inspection shall serve on the party or attorney designated in the
503 subpoena a written objection, if any, to having to give testimony or to inspecting, copying, testing
504 or sampling any or all of the materials or to inspecting the premises, or to producing electronically
505 stored information in the form or forms requested. Such objection must be served on the party or
506 attorney designated in the subpoena within twenty-one days after the subpoena is served.

507 (3) At any time, on notice to the commanded person, the serving party may move the issuing
508 court for an order compelling testimony, production or inspection.

509 (4) The Court may: (1) grant the motion to compel testimony or production or inspection,
510 or modify the subpoena if it is unreasonable and oppressive; or (2) condition the grant of the motion
511 upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs
512 of producing the books, papers, documents, electronically stored information, or tangible things.
513 The timely service of an objection obviates the need for compliance with the deposition subpoena
514 pending further order of the court. The failure to serve an objection within the time period specified
515 herein waives all objections to the subpoena except the right to seek the reasonable costs for
516 producing books, papers, documents, electronically stored information, or tangible things.

517 **45.08. Duties in Responding to Subpoena. * * * ***

proposed

518 *Advisory Commission Comment [2012]*

519 **45.01:** Rule 45.01 is amended to ensure that persons served with subpoenas receive adequate
520 notice, simultaneously with service, that, as provided for in Rule 45.07, the failure to file a motion
521 to quash or modify within fourteen days of service of the subpoena will result in the waiver of the
522 right to seek relief from the subpoena (other than the right to seek the reasonable costs for producing
523 books, papers, documents, electronically stored information, or tangible things). [The notice
524 requirement in Rule 45.01, adopted in 2012, was subsequently deleted from Rule 45.01 and moved
525 to Rule 45.04. See Rule 45.04, Advisory Commission Comment (2013).]

526 **45.04:** Tennessee has adopted the Uniform Interstate Depositions and Discovery Act, Tenn.
527 Code Ann. §§ 24-9-201, et seq. The Act aids only the lawyer who wants to take a deposition or
528 obtain discovery in Tennessee for use elsewhere. Tennessee lawyers seeking to take a deposition
529 or obtain discovery in a foreign jurisdiction must look to that jurisdiction's law for similar assistance.

530 *Advisory Commission Comment [2013]*

531 **45.01:** The amendment deletes language setting out a 14-day time period to file a motion
532 to quash and requiring a notice on the face of the subpoena. That language should not apply to a

533 trial subpoena. Because Rule 45.01 relates to subpoenas in general and the 14-day time period was
534 intended to address the more limited circumstance when a non-party receives a deposition subpoena,
535 the provisions setting out the timing and placing of the notice were deleted from this rule and moved
536 to Rules 45.04 and 45.07 where they properly belong.

537 **45.04:** The amendment requires a notice to be placed on a deposition subpoena issued to a
538 non-party witness with the information that the witness has until twenty-one days after service of
539 the subpoena to serve an objection to the subpoena on the issuing attorney. This change is consistent
540 with the removal of the requirement to file a motion to quash within the earlier of the date of
541 compliance or 14 days from the date of service, as set out in former Rule 45.01.

542 **45.07:** Amended Rule 45.07 states the duty of an issuing party or attorney to avoid undue
543 burden on the non-party witness receiving the subpoena. It also eliminates the necessity for a non-
544 party to file a motion to quash or modify a deposition subpoena for testimony or subpoena for
545 production of documentary evidence. The rule adopts the procedure under Fed. R. Civ. P.
546 45(c)(2)(B), permitting the subpoenaed non-party to serve a written objection on the party or
547 attorney designated in the deposition subpoena. This objection must be served within twenty-one
548 days of service of the subpoena on the non-party. The burden is shifted to the party issuing the
549 subpoena to file a motion to compel. The rule otherwise retains the method of enforcing a subpoena
550 set out in former Tenn. R. Civ. P. 45.07.

proposed

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TENNESSEE RULES OF CIVIL PROCEDURE
RULE 54
JUDGMENTS AND COSTS

[Amend Rule 54.04(2) by adding the underlined text and deleting the overstricken text below:]

54.04. Costs. — (1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law.

(2) Costs not included in the bill of costs prepared by the clerk are allowable only in the court's discretion. Discretionary costs allowable are: reasonable and necessary court reporter expenses for depositions or trials, reasonable and necessary expert witness fees for depositions (or stipulated reports) and for trials, reasonable and necessary interpreter fees not paid pursuant to Tennessee Supreme Court Rule 42 ~~for depositions or trials~~, and guardian ad litem fees; travel expenses are not allowable discretionary costs. Subject to Rule 41.04, a party requesting discretionary costs shall file and serve a motion within thirty (30) days after entry of judgment. The trial court retains jurisdiction over a motion for discretionary costs even though a party has filed a notice of appeal. The court may tax discretionary costs at the time of voluntary dismissal. In the event an appeal results in the final disposition of the case, under which there is a different prevailing party than the prevailing party under the trial court's judgment, the new prevailing party may request discretionary costs by filing a motion in the trial court, which motion shall be filed and served within

570 thirty (30) days after filing of the appellate court's mandate in the trial court pursuant to Rule 43(a),
571 Tenn. R. App. P.

572 *Advisory Commission Comment [2013]*

573 **54.04:** Tenn. Sup. Ct. R. 42 was amended (effective July 1, 2012) to govern the payment of
574 costs for services of interpreters used in proceedings covered by that rule. Rule 54.04(2) was
575 amended to provide that any “reasonable and necessary interpreter fees not paid pursuant to
576 Tennessee Supreme Court Rule 42” may be allowed as discretionary costs.

proposed

577

TENNESSEE RULES OF CIVIL PROCEDURE

578

RULE 55

579

DEFAULT

580 [Add the following new Advisory Commission Comment; the text of the rule is unchanged:]

581

Advisory Commission Comment [2013]

582

Tenn. R. Civ. P. 3A (“Enforcement of Foreign Judgments” was adopted in 2013. With the
583 adoption of Rule 3A, no motion for default or entry of a default judgment is required before the
584 clerk may issue requested execution upon a properly enrolled, undisputed foreign judgment.

proposed

585

TENNESSEE RULES OF CIVIL PROCEDURE

586

RULE 62

587

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

588

[Amend Tenn. R. Civ. P. 62.05(2) by adding the underlined text and deleting the overstricken text below:]

589

590

62.05. Bond for Stay. — A bond for stay shall have sufficient surety and:

591

(1) * * * *

592

(2) if an appeal is from a judgment ordering the assignment, sale, delivery or possession of personal or real property, the bond shall be conditioned to secure obedience of the judgment and payment for the use, occupancy, detention and damage or waste of the property from the time of appeal until delivery of possession of the property and costs on appeal. If the appellant places personal property in the custody of an officer designated by the court, such fact shall be considered by the court in fixing the amount of the bond. A party may proceed as ~~a poor~~ an indigent person without giving any security as provided in Rule 18 of the Tennessee Rules of Appellate Procedure. Upon motion submitted to the trial court and for good cause shown, the bond for stay may be set in an amount less than that called for in the first sentence of this section of this rule. In ruling on such a motion, the trial court may consider all appropriate factors including, but not limited to, the appealing party's financial condition and the amount of the appealing party's insurance coverage, if any. If the motion is granted, the party may obtain a stay by giving such security as the court

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604 deems proper. If leave to obtain a stay required by this rule is denied, the court shall state in writing
605 the reasons for denial.

606 (3) * * * * .

607 *Advisory Commission Comment [2013]*

608 The rule was amended to replace the term “poor person” with the term “indigent person.”
609 The amendment was not intended to change the meaning or application of the rule.

proposed

610

TENNESSEE RULES OF CRIMINAL PROCEDURE

611

RULE 28

612

INTERPRETERS

613

[Amend Rule 28 by adding the underlined text and deleting the overstricken text below, and by deleting the 2006 Advisory Commission Comment:]

614

615

The court may appoint an interpreter pursuant to section 3 of Tennessee Supreme Court Rule

616

42. ~~Reasonable c~~Costs associated with an interpreter's services shall be assessed pursuant to

617

Supreme Court Rule 42. ~~may be assessed against the indigent defense fund pursuant to Tennessee~~

618

~~Supreme Court Rule 13 if the party is indigent and is involved in a proceeding in which he or she~~

619

~~has a statutory or constitutional right to appointed counsel. In all other proceedings the court may~~

620

~~fix the reasonable compensation of an interpreter, and such compensation~~ All interpreter costs not

621

covered by Supreme Court Rule 42 shall be taxed as costs.

622

Advisory Commission Comments [2006]

623

~~————This revised rule distinguishes between indigent and other litigants. It also cross-references the procedure judges should follow in selecting interpreters pursuant to Supreme Court Rule 42.~~

624

625

Advisory Commission Comment [2013]

626

Tenn. Sup. Ct. R. 42 was revised (effective July 1, 2012) to govern the payment of costs for services of interpreters used in proceedings covered by that rule. Rule 28 was amended to provide that payment for interpreters' services is governed by Tenn. Sup. Ct. R. 42, but that any such costs not covered by that rule shall be taxed as costs.

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TENNESSEE RULES OF CRIMINAL PROCEDURE
RULE 36.1
CORRECTION OF ILLEGAL SENTENCE

[Adopt new Rule 36.1 – which is a separate rule from Rule 36 – as follows:]

(a) Either the defendant or the state may, at any time, seek the correction of an illegal sentence by filing a motion to correct an illegal sentence in the trial court in which the judgment of conviction was entered. For purposes of this rule, an illegal sentence is one that is not authorized by the applicable statutes or that directly contravenes an applicable statute.

proposed

(b) Notice of any motion filed pursuant to this rule shall be promptly provided to the adverse party. If the motion states a colorable claim that the sentence is illegal, and if the defendant is indigent and is not already represented by counsel, the trial court shall appoint counsel to represent the defendant. The adverse party shall have thirty days within which to file a written response to the motion, after which the court shall hold a hearing on the motion, unless all parties waive the hearing.

(c)(1) If the court determines that the sentence is not an illegal sentence, the court shall file an order denying the motion.

(2) If the court determines that the sentence is an illegal sentence, the court shall then determine whether the illegal sentence was entered pursuant to a plea agreement. If not, the court

648 shall enter an amended uniform judgment document, *see* Tenn. Sup. Ct. R. 17, setting forth the
649 correct sentence.

650 (3) If the illegal sentence was entered pursuant to a plea agreement, the court shall determine
651 whether the illegal provision was a material component of the plea agreement. If so, the court shall
652 give the defendant an opportunity to withdraw his or her plea. If the defendant chooses to withdraw
653 his or her plea, the court shall file an order stating its finding that the illegal provision was a material
654 component of the plea agreement, stating that the defendant withdraws his or her plea, and
655 reinstating the original charge against the defendant. If the defendant does not withdraw his or her
656 plea, the court shall enter an amended uniform judgment document setting forth the correct sentence.

proposed

657 (4) If the illegal sentence was entered pursuant to a plea agreement, and if the court finds that
658 the illegal provision was not a material component of the plea agreement, then the court shall enter
659 an amended uniform judgment document setting forth the correct sentence.

660 (d) Upon the filing of an amended uniform judgment document or order otherwise disposing
661 of a motion filed pursuant to this rule, the defendant or the state may initiate an appeal as of right
662 pursuant to Rule 3, Tennessee Rules of Appellate Procedure.

663 *Advisory Commission Comment [2013]*

664 Rule 36.1 was adopted to provide a mechanism for the defendant or the State to seek to
665 correct an illegal sentence. With the adoption of this rule, Tenn. R. App. P. 3 also was amended to
666 provide for an appeal as of right from the trial court's ruling on a motion filed under Rule 36.1 to
667 correct an illegal sentence.

668

TENNESSEE RULES OF CRIMINAL PROCEDURE

669

RULE 37

670

APPEAL

671

[Amend paragraph (b)(2) by adding the underlined text and deleting the overstricken text below; paragraphs (a) and (c) - (e) are unchanged:]

672

673

(a) DEFINITION OF AN APPEAL. — An “appeal” refers to direct appellate review available as

674

a matter of right, appeals in the nature of writs of error, and all other direct appeals in criminal cases.

675

(b) WHEN AN APPEAL LIES. — The defendant or the state may appeal any order or judgment

676

in a criminal proceeding when the law provides for such appeal. The defendant may appeal from

677

any judgment of conviction:

678

(1) on a plea of not guilty; or

679

(2) on a plea of guilty or nolo contendere, if:

680

(A) the defendant entered into a plea agreement under Rule

681

~~11(a)(3)~~ 11(c) but explicitly reserved—with the consent of the state

682

and of the court—the right to appeal a certified question of law that is

683

dispositive of the case, and the following requirements are met:

684 (i) the judgment of conviction or order reserving
685 the certified question that is filed before the notice of
686 appeal is filed contains a statement of the certified
687 question of law that the defendant reserved for
688 appellate review;

689 (ii) the question of law as stated in the judgment or
690 order reserving the certified question identifies clearly
691 the scope and limits of the legal issue reserved;

692 (iii) the judgment or order reserving the certified
693 question reflects that the certified question was
694 expressly reserved with the consent of the state and
695 the trial court; and

696 (iv) the judgment or order reserving the certified
697 question reflects that the defendant, the state, and the
698 trial court are of the opinion that the certified question
699 is dispositive of the case; or

700 (B) the defendant seeks review of the sentence and there was
701 no plea agreement under Rule 11(c); or

702 (C) the errors complained of were not waived as a matter of
703 law by the guilty or nolo contendere plea, or otherwise waived, and
704 if such errors are apparent from the record of the earlier proceedings;
705 or

706 (D) if there is no plea agreement pursuant to Rule
707 37(b)(2)(A), the defendant—with the consent of the court—explicitly
708 reserved the right to appeal a certified question of law that is
709 dispositive of the case, and the requirements of Rule 37(b)(2)(A)(i)-
710 (ii) are otherwise met, ~~except the judgment or order reserving the~~
711 ~~certified question need not reflect the state's consent to the appeal or~~
712 ~~the state's opinion that the question is dispositive.~~

713 (c) * * * *

714 *Advisory Commission Comment [2013]*

715 Rule 37(b)(2) was amended to clarify the provisions regarding the appeal of cases in which
716 the defendant reserves a certified question of law. *See State v. Joseph L. Lands*, No. W2011-00386-
717 CCA-R3-CD, 2012 Tenn. Crim. App. LEXIS 203 (Tenn. Crim. App. March 29, 2012) (discussing
718 history of Rule 37(b)(2) and apparent drafting error in earlier revision of the rule).

719

TENNESSEE RULES OF EVIDENCE

720

RULE 410

721

INADMISSIBILITY OF PLEAS, PLEA DISCUSSIONS,
722 AND RELATED STATEMENTS

722

723

[Amend the original Advisory Commission Comment as indicated below; the text of the rule and
724 the text of the 1994 Comment are unchanged:]

724

725

Except as otherwise provided in this rule, evidence of the following is not, in any civil or

726

criminal proceeding, admissible against the party who made the plea or was a participant in the plea

727

discussions:

728

(1) A plea of guilty which was later withdrawn;

729

(2) A plea of *nolo contendere*;

730

(3) Any statement made in the course of any proceedings under Rule 11 of

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the Tennessee Rules of Criminal Procedure regarding either of the foregoing pleas;

732

or

733

(4) Any statement made in the course of plea discussions with an attorney for

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the prosecuting authority which do not result in a plea of guilty or which result in a

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plea of guilty later withdrawn. Such a statement is admissible, however, in a criminal

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proceeding for perjury or false statement if the statement was made by the defendant

737

under oath, on the record, and in the presence of counsel.

738

Advisory Commission Comments

739

This rule is ~~similar in effect to~~ cross-referenced in Tenn. R. Crim. P. 11(e)(6)(d), referred to
740 ~~in subsection (3)~~.

741

Advisory Commission Comment [1994]

742

743

Williams v. Brown, 860 S.W.2d 854 (Tenn. 1993), held misdemeanor traffic fine payments without court appearance inadmissible by analogy to Rule 410.

744

Advisory Commission Comment [2013]

745

746

The original Advisory Commission Comment was revised to correct an obsolete cross-reference to a now nonexistent subparagraph of Tenn. R. Crim. P. 11.

proposed

747

TENNESSEE RULES OF JUVENILE PROCEDURE

748

RULE 1

749

TITLE OF RULES – SCOPE – PURPOSE AND CONSTRUCTION –

750

SITUATIONS NOT COVERED BY RULES

751

[Amend paragraph (b) by adding the underlined text at the end of the second sentence; the other paragraphs in the rule are unchanged:]

752

753

(a) * * * *

754

(b) SCOPE. These rules shall govern the procedure in juvenile court in all cases in which

755

children are alleged to be delinquent, unruly, dependent and neglected, or abandoned; in all cases

756

involving emergency temporary care under T.C.A. § 37-1-128; in all cases to revoke the

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probation of delinquent or unruly children; and in all cases to terminate home placements under

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T.C.A. § 37-1-137. The procedures employed in general sessions court under the Tennessee

759

Rules of Criminal Procedure shall govern all cases in which children are alleged to have

760

committed juvenile traffic offenses as defined in T.C.A. § 37-1-146 and all cases heard in

761

juvenile court involving child abuse prosecutions under T.C.A. §§ 37-1-412 and 39-15-401,

762

nonsupport of children, or contributing to the delinquency or unruly behavior or dependency and

763

neglect of children, pursuant to T.C.A. §§ 37-1-156 and 37-1-157. The Tennessee Rules of Civil

764

Procedure shall govern all cases involving the termination of parental rights, paternity cases,

765

guardianship and mental health commitment cases involving children, and child custody

766

proceedings under T.C.A. §§ 36-6-101, et seq., 36-6-201, et seq., and 37-1-104(a)(2) and (f);

767

however, discovery in such cases in juvenile court shall be governed by Rule 25 of these rules.

768

Rule 39 shall also apply in termination of parental rights proceedings. In a case governed by the

769 Rules of Civil Procedure, the rules may be suspended by the court upon a finding supported by
770 specific facts stated on the record and in the final order that the interests of justice so require. In
771 the event that the Rules of Civil Procedure are suspended, the Rules of Juvenile Procedure shall
772 apply. Contempt proceedings shall be conducted pursuant to the procedures applicable in courts
773 of general jurisdiction.

774 (c) * * * *

775 *Advisory Commission Comment [2013]*

776 The 2013 amendment added the statutory references to T.C.A. §§ 37-1-156 and -157
777 after the phrase “or contributing to the delinquency or unruly behavior or dependency and
778 neglect of children” to alleviate misinterpretation of the rule. In cases in which an adult is
779 charged with contributing to the delinquency or unruly behavior or dependency and neglect of a
780 child, the procedures employed in general sessions court under the Rules of Criminal Procedure
781 apply. In all cases in which children are alleged to be delinquent, unruly, dependent and
782 neglected, or abandoned, the Rules of Juvenile Procedure apply, as stated in the first sentence of
783 section (b).