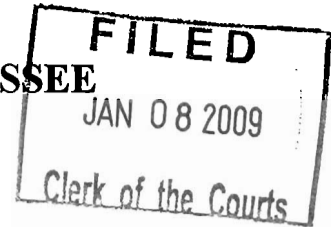


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



IN RE:        AMENDMENTS TO TENNESSEE  
              RULES OF APPELLATE PROCEDURE

ORDER

The Court adopts the attached amendments effective July 1, 2009, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 13	SCOPE OF REVIEW
RULE 34	VOLUNTARY MEDIATION
RULE 36	RELIEF; EFFECT OF ERROR.

FOR THE COURT:

  
\_\_\_\_\_  
JANICE M. HOLDER  
CHIEF JUSTICE

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 13

SCOPE OF REVIEW

[add the following new Advisory Commission Comment:]

**2009 Advisory Commission Comment**

See amended Rule 36(b), Tenn. R. App. P., on the plain error doctrine.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 34

VOLUNTARY MEDIATION

[add the following new Rule 34:]

**Rule 34. Voluntary Mediation. —**

(a) Within five days following receipt of the notice of appeal in all cases appealed to the Court of Appeals, the Clerk of the Appellate Courts shall notify the parties or their counsel that, consistent with the requirements of this rule, they may jointly request a suspension of the processing of the appeal for the purpose of engaging in voluntary mediation.

(b) Parties desiring to engage in voluntary mediation shall file a joint stipulation requesting suspension of the appeal with the Clerk of the Appellate Courts within fifteen days after the date of the notice provided for in Section (a). Upon the filing of a timely joint stipulation, the time for preparing the transcript or statement of the evidence, the record on appeal, and the briefs shall be suspended for no more than sixty days to enable the parties to mediate their dispute. The Clerk of the Appellate Courts shall notify the trial court clerk of the filing of the stipulation of suspension of the appeal. However, the provisions of this rule providing for the suspension of the processing of the appeal pending voluntary mediation shall not apply to (1) appeals required to be expedited by statute, rule, or order of a court, (2) appeals in which the constitutionality of a statute, or rule or the constitutionality of an application of a statute, ordinance or rule is an issue, or (3) appeals involving the imposition of criminal contempt sanctions.

(c) If the voluntary mediation is successful, the parties shall file a notice of voluntary dismissal of the appeal in accordance with Tenn. R. App. P. 15(a) within five days following the conclusion of the mediation. The Clerk of the Appellate Courts shall notify the trial court clerk of

the filing of the notice of voluntary dismissal of the appeal. The notice of voluntary dismissal shall provide for the taxation of costs. If the voluntary mediation is not successful as to all issues, the parties shall file a notice with the Clerk of the Appellate Courts within five days requesting the resumption of the appeal. If the voluntary mediation is successful as to some but not all issues, the parties shall file a notice with the Clerk of the Appellate Courts within five days identifying the remaining issues requesting a resumption of the appeal as to those issues only. The Clerk of the Appellate Courts shall notify the trial court clerk of the notice of resumption of the appeal. If no notice of voluntary dismissal has been filed with the Court of Appeals within sixty days after the filing of the joint stipulation, the appeal shall be returned to the active docket, and the applicable appellate deadlines shall be reactivated. If, within sixty days after the filing of the joint stipulation, the parties and the mediator jointly file a notice of an extension of up to an additional thirty days to complete the mediation process, the Clerk of the Appellate Courts shall return the case to the active docket after the expiration of the extended period if no notice of voluntary dismissal has been filed. The Clerk of the Appellate Courts shall notify the trial court clerk when the appeal has been returned to the active docket.

(d) The parties may voluntarily resolve their disputes in any appeal filed in the Court of Appeals without requesting the suspension of the processing of the appeal.

(e) Evaluation of Voluntary Appellate Mediation by the Parties

(1) In those appeals in which the parties invoke voluntary appellate mediation under this rule, each party shall complete an evaluation form supplied by the Clerk of the Appellate Courts and shall forward the evaluation to the Clerk's office in the grand division in which the case is filed within ten (10) days of the completion of mediation. The evaluation shall be maintained as confidential and shall not be entered into the case file.

(2) The completed evaluation form shall be placed in an evaluation envelope supplied with the evaluation form, and the evaluation envelope shall be sealed. The sealed evaluation envelope shall then be placed in a cover envelope and mailed to the Clerk of the Appellate Courts in the grand division in which the case is filed. The case name and number shall be noted on the cover envelope ONLY.

(3) Upon receipt of the cover envelope, the Clerk of the Appellate Courts shall note the receipt of the evaluation envelope in the case file, open the cover envelope, remove the sealed evaluation envelope, and forward the unopened evaluation envelope to the Programs Manager of the Administrative Office of the Courts for processing.

(4) The Programs Manager of the Administrative Office of the Courts shall receive the evaluation envelopes, remove the evaluations, and compile the results of the evaluations; the Programs Manager shall provide information to the Supreme Court and/or Court of Appeals on the results of the evaluations on a periodic basis set by the Supreme Court and/or Court of Appeals.

#### **2009 Advisory Commission Comment**

Rule 34 introduces a new procedure to appellate practice in civil cases. If the parties voluntarily decide to mediate their dispute, pursuant to the provisions of section (b) of this Rule, various deadlines are suspended. There is also an evaluation process for voluntary appellate mediation.

One should note that Rule 34(a) provides that this rule applies to “all cases appealed to the Court of Appeals.” Consequently, the rule does *not* apply to workers’ compensation cases, which are appealed to the Supreme Court. See Tenn. Sup. Ct. R. 37 for provisions governing appellate mediation in workers’ compensation cases.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 36

RELIEF; EFFECT OF ERROR

[Amend 36(b) to read as follows:]

(b) Effect of Error.—A final judgment from which relief is available and otherwise appropriate shall not be set aside unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process. When necessary to do substantial justice, an appellate court may consider an error that has affected the substantial rights of a party at any time, even though the error was not raised in the motion for a new trial or assigned as error on appeal.

**2009 Advisory Commission Comment**

A second sentence is added to Rule 36(b) incorporating the plain error doctrine. The initial sentence states the harmless error doctrine.

See Tenn. R. App. P. 13(b) on consideration of issues not presented for review.