IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF CIVIL PROCEDURE

Filed January 6, 2005

O R D E R

The Court adopts the attached amendments effective July 1, 2005, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 1	SCOPE OF RULES
RULE 1A	SEALING COURT RECORDS
RULE 3	COMMENCEMENT OF ACTION
RULE 4	PROCESS
RULE 19	JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION
RULE 41	DISMISSAL OF ACTIONS
RULE 45	SUBPOENA
RULE 54	JUDGMENTS AND COSTS
RULE 58	ENTRY OF JUDGMENT.

FOR THE COURT:

_____

FRANK F. DROWOTA, III,
CHIEF JUSTICE

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 1

SCOPE OF RULES

Subject to exceptions as are stated in particular rules, the Rules of Civil Procedure shall govern procedure in the circuit or chancery courts in all civil actions, whether at law or in equity, and in all other courts while exercising the civil jurisdiction of the circuit or chancery courts. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

The Rules of Civil Procedure shall not apply to general sessions courts except as follows:

(1) The rules shall apply to general sessions courts exercising civil jurisdiction of the circuit or chancery courts;

(2) The rules shall apply after appeal or transfer of a general sessions civil lawsuit to circuit court; and

(3) Rule of Civil Procedure 69 governing execution on judgments shall apply to civil judgments obtained in general sessions courts.

2005 Advisory Commission Comment

The amendment makes Rule 69 applicable to execution on judgments obtained in a general sessions court.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 1A

SEALING COURT RECORDS

It being the public policy of this State that the public interests are best served by open courts and by an independent judiciary, the following provisions shall govern the sealing of and access to court records in all civil actions.

1A.01 Standard for Sealing Court Records.–Court records may not be removed from court files except as permitted by statute or rule. Court orders and opinions issued in the adjudication of cases, and court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

(a) a specific, serious and substantial interest that clearly outweighs:

(1) this presumption of openness; and

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

1A.02 Court Records.–For purposes of this rule, “court records” means:

(a) all documents of any nature filed in connection with any matter before any civil court, except:

(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

(2) documents in court files to which access is otherwise restricted by law; or

(3) documents and other matters subject to a protective order issued pursuant to Rule 26.03(7) of the Tennessee Rules of Civil Procedure or to maintain the privacy of financial information of individuals or closely-held, non-public entities such as partnerships, limited partnerships, subchapter s corporations, limited liability companies or limited liability partnerships.

(b) settlement agreements not filed of record but pertaining to a commenced civil action, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.

(c) discovery not filed of record that is related to a commenced civil action or that has been obtained pursuant to Tennessee Rule of Civil Procedure 27, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

1A.03 Notice–Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice in a conspicuous place at the clerk's office of the court in which the case was filed, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Tennessee.

1A.04 Hearing.–A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than ten (10) days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings in accordance with the procedure provided in subpart 1A.10 of this Rule. The court may inspect records in camera when necessary and shall restrict the participation of intervening non-parties to those matters directly related to the determination of whether an order sealing the court records is appropriate.

1A.05 Temporary Sealing Order.–A temporary sealing order may issue upon motion and notice to any parties who have appeared in the action by filing a pleading or motion upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph .04 and shall direct that the movant immediately give the public notice required by paragraph .03. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph .04.

1A.06 Order on Motion to Seal Court Records.–A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph .01 has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.

1A.07 Continuing Jurisdiction.–Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervenor who had actual notice of the

hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph .01 shall always be on the party seeking to seal records. If the matter is on appeal, a motion to seal or unseal may not be entertained by the trial court absent remand by the appellate court.

1A.08 Appeal.–Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and to be a final judgment which may be appealed pursuant to Rule 3, Tenn. R. App. P., by any party or intervenor who participated in the hearing preceding issuance of such order. Upon motion filed in the appellate court by any party or intervenor, or in the court's own discretion, the appellate court may expedite the appeal. Nothing in this rule shall limit the discretion of the trial court to order a stay of proceedings pending the determination of an appeal taken pursuant to this section.

1A.09 Application.–Access to documents in court files not defined as "court records" by this subpart 1A.02 remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:

(a) all court records filed or exchanged after the effective date;

(b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

1A.10 Intervention.–Any person who is not already a party to the action may participate in the court proceedings with respect to a hearing on a motion to seal or unseal court records by filing a petition in the action for leave to intervene. The petition to intervene shall be subject to the usual filing fee applicable to the filing of an original action and parties to the action shall be required to respond in accordance with the time limits and procedure set forth in Rule 12.01. This procedure shall also apply to any party seeking to intervene in an action for the purpose of presenting a motion to unseal court records, as defined in Rule 1A.02, in that action.

2005 Advisory Commission Comments

Rule 1A is derived from Texas Rule of Civil Procedure 76a but is similar in concept to procedures that have been adopted in a large and growing number of states. It represents a response to an increasing demand for public access to matters that are related to court proceedings and the need to provide courts with a uniform procedure for addressing such issues.

As provided in 1A.07, any person receiving prior notice of a hearing seeking an order sealing or unsealing court records may only seek reconsideration upon a showing of changed circumstances. When a motion to seal or unseal is brought by a person who did not have notice of the earlier proceeding, the party maintaining that the records should be sealed bears the burden of showing that sealing of the records is proper.

Pursuant to 1A.08, an order that grants or denies a request to seal or unseal court records becomes immediately appealable as a matter of right. For purposes of appeal, the order relating to sealing or unsealing becomes severed from the main action, which may then proceed independently or may be stayed in the exercise of the trial court's discretion. In effect, such orders are similar to a determination made pursuant to Rule 54.02 following the adjudication of less than of all claims.

Rule 1A.10 establishes a unique procedure to govern the intervention of non-parties who seek to intervene to participate in a court proceeding concerned with the sealing or unsealing of court records.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 3

COMMENCEMENT OF ACTION

[Change final sentence to read:]

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.

2005 Advisory Commission Comment

This amendment to the final sentence mirrors an amendment to Rule 4.03 increasing time for service of a summons from 30 to 90 days.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 4

PROCESS

4.03 Summons; Return.--

[Change the second and third sentences in subsection (1) to read:]

If a summons is not served within 90 days after its issuance, it shall be returned stating the reasons for failure to serve. The plaintiff may obtain new summonses from time to time, as provided in Rule 3, if any prior summons has been returned unserved or if any prior summons has not been served within 90 days of issuance.

2005 Advisory Commission Comment

The amendment to Rule 4.03(1) increases time for service of a summons from 30 to 90 days.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 19

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

19.01 Persons to be Joined if Feasible.--

[In the first sentence, change "the jurisdiction of the court" to "service of process," such that the sentence begins as follows:]

A person who is subject to service of process shall be joined as a party if. . . .

2005 Advisory Commission Comment

The first sentence of Rule 19.01 is changed to refer to "service of process" rather than "jurisdiction" to make clear that personal rather than subject matter jurisdiction is intended.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 41

DISMISSAL OF ACTIONS

2005 Advisory Commission Comment

Plaintiffs and their counsel should note that in certain circumstances a case cannot be recommenced after the filing of a voluntary nonsuit. *See e.g. Lynn v. City of Jackson*, 63 S.W.3d 332, 337 (Tenn. 2001) (stating, "the general rule in Tennessee is that savings statutes may not be applied to extend the period within which an action must be filed under the [Governmental Tort Liability Act]"); *In re Estate of Barnhill*, 62 S.W.3d 139 (Tenn. 2001) (holding that a will contest action cannot be refiled after a voluntary nonsuit).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

45.02 For Production of Documentary Evidence.–A subpoena may command a person to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises with or without commanding the person to appear in person at the place of production or inspection. When appearance is not required, such a subpoena shall also require the person to whom it is directed to swear or affirm that the books, papers, documents, or tangible things are authentic to the best of that person's knowledge, information, and belief and to state whether or not all books, papers, documents, or tangible things responsive to the subpoena have been produced for copying or inspection. Copies of the subpoena must be served pursuant to Rule 5 on all parties, and all material produced must be made available for inspection or copying by all parties.

. . . .

45.07 Protection of Persons Subject to Subpoena.–With respect to any subpoena issued under this rule the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may: (1) quash or modify the subpoena if it is unreasonable and oppressive; or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, or tangible things.

2005 Advisory Commission Comment

[Delete all prior comments and substitute:]

Under prior Rules 45.02 and 45.07, a party seeking the production of books, papers, documents, or tangible things, or inspection of premises, was required to issue a subpoena for the testimony of the custodian. The amendment to Rule 45.02 allows a subpoena for production of documentary evidence without requiring the custodian's attendance at a deposition. The rule also requires the person responding to provide an affidavit authenticating the documentary evidence produced pursuant to the subpoena and stating whether or not all responsive material has been produced. The rule requires that all parties have access to the material produced pursuant to subpoena. The procedures in this Rule compel the production of documents for review, but do not necessarily authenticate documents pursuant to Rule 902 of the Tennessee Rules of Evidence. This Rule also provides that a subpoena may command the inspection of a premises.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 54

JUDGMENTS AND COSTS

[Revise 54.04 to read:]

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

2005 Advisory Commission Comment

In some cases, the "prevailing party" under the trial court's judgment may not be the prevailing party following an appeal of the judgment. The amendment to Rule 54.04(2) provides a procedure for requesting discretionary costs in cases in which: (1) the appellate court's decision is a final disposition of the merits of the case; and (2) the appellate court's decision results in a new prevailing party. The amendment does not cover cases in which the appellate court's decision is not a final disposition of merits of the case, i.e., cases that are remanded for a new trial or for other proceedings on the merits; in such cases, a motion for discretionary costs may be filed following the trial court's ultimate judgment on remand.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 58

ENTRY OF JUDGMENT

[Revise to read:]

Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:

(1) the signatures of the judge and all parties or counsel, or

(2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or

(3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

Following entry of judgment the clerk shall make appropriate docket notations and shall copy the judgment on the minutes, but failure to do so will not affect validity of the entry of judgment. When requested by counsel or pro se parties, the clerk shall forthwith mail or deliver a copy of the entered judgment to all parties or counsel. If the clerk fails to forthwith mail or deliver, a party prejudiced by that failure may seek relief under Rule 60.

2005 Advisory Commission Comment

The rule is amended to allay concerns raised in *Binkley v. Medling*, 117 S.W.3d 252 (Tenn. 2003). Upon request the clerk is to mail "forthwith" (immediately, without delay) a copy of the judgment to all concerned. The request and mailing, or failure to mail, do not affect the time for filing a post-trial motion authorized by these rules (e.g., motion to alter or amend, or motion for a new trial) or a notice of appeal. Parties prejudiced by clerical negligence may pursue relief by a Rule 60 motion.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF CRIMINAL PROCEDURE

Filed January 6, 2005

O R D E R

The Court adopts the attached amendment effective July 1, 2005, subject to approval by resolution of the General Assembly. The rule amended is as follows:

RULE 31 VERDICT.

FOR THE COURT:

_____
FRANK F. DROWOTA, III,
CHIEF JUSTICE

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 31

VERDICT

[replace current paragraph (c) with the following new paragraph:]

(c) Conviction of Lesser Offense.

(1) Definition of Lesser Included Offense. The defendant may be found guilty of:

(A) an offense necessarily included in the offense charged; or

(B) an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(2) Procedures When No Unanimous Verdict. If the court instructs the jury on one or more lesser included offenses and the jury reports that it cannot unanimously agree on a verdict, the court shall address the foreperson and inquire whether there is disagreement as to the charged offense and each lesser offense on which the jury was instructed. The following procedures apply:

(A) The court shall begin with the charged offense and, in descending order, inquire as to each lesser offense until the court determines at what level of the offense the jury has disagreed;

(B) The court shall then inquire if the jury has unanimously voted not guilty to the charged offense.

(i) If so, at the request of either party the court shall poll the jury as to their verdict on the charged offense.

(ii) If it is determined that the jury found the defendant not guilty of the charged offense, the court shall enter a not guilty verdict for the charged offense.

(C) The court shall then inquire if the jury unanimously voted not guilty as to the next, lesser instructed offense.

(i) If so, at the request of either party the court shall poll the jury as to their verdict on this offense.

(ii) If it is determined that the jury found the defendant not guilty of the lesser offense, the court shall enter a not guilty verdict for that offense.

(D) The court shall continue this inquiry for each lesser instructed offense in descending order until the inquiry comes to the level of the offense on which the jury disagreed.

(E) The court may then declare a mistrial as to that lesser offense, or the court may direct the jury to deliberate further as to that lesser offense as well as any remaining offenses originally instructed to the jury.

2005 Advisory Commission Comment

In cases where the court instructs the jury on the charged offense and one or more lesser offenses, and the jury reports an inability to reach a verdict, it is not always apparent on which offense the jury disagreed. The practice in Tennessee is to give sequential jury instructions that require a jury to consider guilt of the greatest charged offense before moving on to consider the lesser offenses. In some cases, the jury may acquit the defendant of the greater offense but be unable to reach a unanimous verdict on one or more lesser offenses. If the court grants a mistrial as to all offenses because of the jury's failure to reach agreement on a lesser offense, the double jeopardy clause is implicated if the jury actually acquitted the defendant of one or more of the greater offenses but disagreed on a lesser one.

The amendment to subsection (c) is intended to minimize double jeopardy issues and avoid releasing a jury without determining whether it reached agreement on some degree of the charged offense.

The rule provides for a sequential inquiry by the trial court, beginning with the greatest charged offense and continuing in descending order of offenses until the court determines at what level the jury has disagreed. The court must then determine whether the jury unanimously found the defendant not guilty of any greater offenses. To eliminate ambiguity, the rule also provides for jury polling on a party's request. Rule 31(d) also permits the court to poll the jury on the court's own motion.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF APPELLATE PROCEDURE

Filed January 6, 2005

O R D E R

The Court adopts the attached amendments effective July 1, 2005, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 3	APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION
RULE 4	APPEAL AS OF RIGHT: TIME FOR FILING NOTICE OF APPEAL
RULE 9	INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT
RULE 10	EXTRAORDINARY APPEAL BY PERMISSION ON ORIGINAL APPLICATION TO THE APPELLATE COURT
RULE 16	JOINT AND CONSOLIDATED APPEALS
RULE 24	CONTENT AND PREPARATION OF THE RECORD
RULE 25	COMPLETION AND TRANSMISSION OF THE RECORD.

FOR THE COURT:

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FRANK F. DROWOTA, III,
CHIEF JUSTICE

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 3

APPEAL AS OF RIGHT: AVAILABILITY;
METHOD OF INITIATION

[Delete paragraph (h)]

2005 Advisory Commission Comment

Former subdivision (h) (pertaining to "assignments of error") is deleted because it is obsolete.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 4

APPEAL AS OF RIGHT: TIME FOR
FILING NOTICE OF APPEAL

[add new paragraph (e):]

(e) Effect of Specified Timely Motions on Trial Court's Jurisdiction.–The trial court retains jurisdiction over the case pending the court's ruling on any timely filed motion specified in subparagraph (b) or (c) of this rule. A notice of appeal filed prior to the trial court's ruling on a timely specified motion shall be deemed to be premature and shall be treated as filed after the entry of the order disposing of the motion and on the day thereof. If an appellant named in a premature notice of appeal decides to terminate the appeal as a result of the trial court's disposition of a motion listed in subparagraph (b) or (c) of this rule, the appellant shall file in the appellate court a motion to dismiss the appeal pursuant to Rule 15.

2005 Advisory Commission Comment

Paragraphs (b) and (c) of this rule provide that the time for filing a notice of appeal "shall run from the entry of the order denying a new trial or granting or denying any other such motion." Nonetheless, some parties have filed notices of appeal before post-trial motions specified in this rule were filed or while such motions were pending decision, raising questions about the jurisdiction of a trial court to consider such motions. New paragraph (e) makes clear that a trial court retains jurisdiction over such motions despite the premature filing of a notice of appeal.

If a post-trial motion specified in Rule 4 is timely filed after the filing of a notice of appeal and after the trial court clerk's service of the notice of appeal on the clerk of the appellate court pursuant to Rule 5(a), the trial court clerk must notify the clerk of the appellate court of the filing of the motion; in addition, the trial court clerk must promptly notify the clerk of the appellate court of the entry of the trial court's order disposing of the motion.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 9

INTERLOCUTORY APPEAL BY PERMISSION
FROM THE TRIAL COURT

[Revise the first full sentence of paragraph (d) to read:]

(d) Content of Application; Answer. – The application shall contain: (1) a statement of the questions presented for review; (2) a statement of the facts necessary to an understanding of why an appeal by permission lies; and (3) a statement of the reasons supporting an immediate appeal.

Advisory Commission Comment.

Rule 9(d) is amended to add a statement of the questions presented for review to the list of items that must be included in the application.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 10

EXTRAORDINARY APPEAL BY PERMISSION ON
ORIGINAL APPLICATION TO THE APPELLATE COURT

[Revise the first full sentence of paragraph (c) to read:]

(c) Content of Application. – The application shall contain: (1) a statement of the questions presented for review; (2) a statement of the facts necessary to an understanding of why an extraordinary appeal lies; (3) a statement of the reasons supporting an extraordinary appeal, and (4) the relief sought.

Advisory Commission Comment.

Rule 10(c) is amended to add a statement of the questions presented for review to the list of items that must be included in the application.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 16

JOINT AND CONSOLIDATED APPEALS

[Revise to read as follows:]

(a) Joint Appeals.–If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may proceed on appeal jointly. If two or more persons file separate notices of appeal from one judgment or order, the case shall be docketed in the appellate court as a single appeal.

(b) Consolidated Appeals.–When separate appeals involving a common question of law or common facts are pending before the appellate court, the appeals may be consolidated by order of the appellate court on its own motion or on motion of a party.

2005 Advisory Commission Comment

Paragraph (a) is amended to harmonize this rule with the 2004 amendment to Rule 3(f) (regarding content of notice of appeal). Under paragraph (a) parties either may file a joint notice of appeal in compliance with Rule 3(f) or they may file separate notices of appeal. In either situation, when parties are seeking to appeal from a single judgment or order, the case will be docketed as a single appeal. Paragraph (b) is amended to clarify that appeals from separate cases may be consolidated on the court's own motion or on motion of a party, when the separate cases involve a common question of law or a common set of facts.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 24

CONTENT AND PREPARATION OF THE RECORD

[Revise paragraph (h) to read as follows:]

(h) Filing of Transcript or Statement; Service of Notice to Parties. –Nothing in this rule shall be construed as prohibiting any party from preparing and filing with the clerk of the trial court a transcript or statement of the evidence or proceedings at any time prior to entry of an appealable judgment or order. Upon filing, the party preparing the transcript or statement shall simultaneously serve notice of the filing on all other parties, accompanied by a short and plain declaration of the issues the party may present on appeal. Proof of service shall be filed with the clerk of the trial court with the filing of the transcript or statement. Any differences regarding the transcript or statement shall be settled as set forth in subdivision (e) of this rule.

2005 Advisory Commission Comment

Paragraph (h) is amended to remove obsolete references to "bills of exception" and "wayside bills of exception."

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 25

COMPLETION AND TRANSMISSION OF THE RECORD

(a) Time for Completion of the Record; Duty of the Parties.–

[Delete the final sentence of the present language and insert the following as a new second paragraph of (a):]

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

. . . .

(c) Duty of Clerk to make Record Available to Prepare Appellate Papers.–

[Delete all language after the first three sentences and substitute the following amended and redrafted sentences:]

The attorney shall return the record to the clerk in its entirety and in an organized manner, with all volumes of the record intact and with all exhibits accounted for. In the event the returned record is either incomplete or in disarray, the appellate court in its discretion may require the attorney to pay the cost of reconstructing the record and/or may suspend the attorney's privilege to check out records in the future. The clerk shall keep a written account of requests for and return of the record.

Pro se litigants shall be allowed to remove the record from the appellate clerk's office only upon order of the appellate court. However, pro se litigants may inspect the record at the appellate clerk's office pursuant to Supreme Court Rule 34.

2005 Advisory Commission Comment

Subdivision (a). The amendment to subdivision (a) changes the manner in which the exhibits included in the record are transmitted to the appellate court. Because individual exhibits occasionally are lost by attorneys who check out the record or by appellate court personnel, the rule is amended to require that the exhibits to the extent possible be compiled into bound volumes separate from the transcript of the evidence or proceedings. The Commission believes that having the original exhibits bound into volumes will reduce the possibility that an individual exhibit will be lost.

Because individual exhibits occasionally are lost after the record is transmitted to the appellate court, attorneys are well-advised to retain duplicates of all exhibits pending the final disposition in the case. If the parties have duplicates of the exhibits, a lost exhibit can be replaced

with relative ease; on the other hand, if neither party has a copy of the missing exhibit, it might not be possible to replace the missing exhibit. In the latter case appellate review of the case can be adversely affected.

Subdivision (c). The appellate court clerk's experience shows that some attorneys have returned records to the clerk with bound volumes of the record disassembled, with exhibits missing, or with the components of the record disorganized. The purpose of the amendment to the first paragraph of subdivision (c), requiring attorneys to return the record intact and in an organized manner, is two-fold: (1) to assist the clerk's personnel in efficiently verifying that each record returned to the appellate clerk is complete; and (2) to assist the appellate court, which subsequently will be reviewing the record when deciding the appeal.

The second paragraph of subdivision (c) is amended to refer to Rule 34, Rules of the Tennessee Supreme Court, governing access to appellate judicial records.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF EVIDENCE

Filed January 6, 2005

O R D E R

The Court adopts the attached amendments effective July 1, 2005, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 103	RULINGS ON EVIDENCE
RULE 404	CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES
RULE 608	EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS.

FOR THE COURT:

_____

FRANK F. DROWOTA, III,
CHIEF JUSTICE

TENNESSEE RULES OF EVIDENCE

RULE 103

RULINGS ON EVIDENCE

(b) Record of Offer and Ruling.--

[Add a second paragraph reading as follows:]

If an issue arises concerning the privileged nature of a communication, the trial court may require the communication be reduced to writing for in camera review. If ruled not privileged, the communication can be divulged in open court and will become part of the record for appellate review. If ruled privileged, the trial court shall seal the writing reviewed in camera and attach it to the record for appellate review.

2005 Advisory Commission Comment

The second paragraph in Rule 103(b) provides a procedure for appellate review where parties disagree whether a communication is privileged. Rulings at trial are subject to interlocutory appeals pursuant to Appellate Rules 9 and 10.

TENNESSEE RULES OF EVIDENCE

RULE 404

CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

2005 Advisory Commission Comment

The word "person" in Rule 404(b) has been construed to refer solely to the defendant in a criminal prosecution. *State v. Stevens*, 78 S.W.3d 817 (Tenn. 2002).

TENNESSEE RULES OF EVIDENCE

RULE 608

EVIDENCE OF CHARACTER AND
CONDUCT OF WITNESS

(2) Specific Instances of Conduct.–

[For "credibility" in the first and last sentences of this subsection, substitute "character for truthfulness."]

2005 Advisory Commission Comment

Substituting "character for truthfulness" in place of "credibility" at the beginning and end of Rule 608(b) clarifies that contradiction impeachment by extrinsic evidence is permissible.