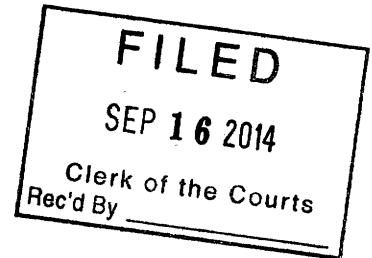


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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

\_\_\_\_\_  
No. ADM2014-01791  
\_\_\_\_\_



**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 2014, the Advisory Commission completed its 2013-2014 term and transmitted 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 Wednesday, November 26, 2014. Written comments should be addressed to:

James Hivner, Clerk  
Re: 2015 Rules Package  
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***

**[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 by adding the new subdivision (h) (new text is underlined):]

5 (a) \* \* \* \*

6 *proposed*  
(h) Cross Appeals and Separate Appeals Not Required in Civil Cases. – Consistent  
7 with Rule 13(a), cross appeals and separate appeals are not required. Consequently, upon  
8 the filing of a single notice of appeal in a civil case, issues may be brought up for review and  
9 relief pursuant to these rules by any party.

10 *Advisory Commission Comment [2015]*

11 The amendment added subdivision (h), which refers to Tenn. R. App. P. 13(a)'s  
12 statement that “[c]ross appeals . . . [and] separate appeals” are not required. Subdivision (h)  
13 goes on to state that, upon the filing of a single notice of appeal in a civil case, issues may  
14 be raised pursuant to these rules by any party. Thus, after the filing of a single notice of  
15 appeal by one or more parties, other parties are not required to file a separate notice of appeal  
16 in order to raise their own issues in the appellate court.

17 TENNESSEE RULES OF APPELLATE PROCEDURE

18 RULE 9

19 INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT

20 [Amend subdivision (e) as indicated below (deleted text is overstricken and new text is  
21 underlined):]

22 \* \* \* \*

23 (e) ~~Filing the Record~~Subsequent Procedure. — After the answer is filed, or if no  
24 answer is filed within the time permitted, the appellate court shall either grant or deny the  
25 application. If the application is granted, the~~The~~ trial court clerk must file the record on  
26 appeal within 30 days from the date of entry of the order granting permission to appeal. The  
27 filing of briefs following the granting of an application under this rule is governed by rules  
28 27 - 30, unless otherwise ordered by the appellate court.

29 \* \* \* \*

30 *Advisory Commission Comment [2015]*

31 Subdivision (e) was amended by: (1) changing the subtitle of the subdivision from  
32 “Filing the Record” to “Subsequent Procedure”; (2) adding the first sentence concerning the  
33 court’s action on the application; and (3) adding the third sentence concerning the filing of  
34 briefs in cases in which the application is granted.

35           If the intermediate appellate court denies an application for an interlocutory appeal  
36 under Tenn. R. App. P. 9 and the Supreme Court subsequently grants permission to appeal,  
37 Tenn. R. App. P. 11(f), as amended in 2015, provides that the appellant's brief must be filed  
38 within thirty days of the filing of the record in the Supreme Court.

*proposed*

39 TENNESSEE RULES OF APPELLATE PROCEDURE

40 RULE 10

41 EXTRAORDINARY APPEAL BY PERMISSION  
42 ON ORIGINAL APPLICATION IN THE APPELLATE COURT

43 [Amend subdivision (d) as indicated below (new text is underlined):]

44 \* \* \* \*

45 (d) Subsequent Procedure. — If the appellate court is of the opinion that an  
46 extraordinary appeal should not be granted, it shall deny the application. Otherwise, the  
47 appellate court shall order that an answer to the application be filed by the other parties  
48 within the time fixed by the order. The order shall be served on all other parties and if the  
49 application has not previously been served shall have attached thereto a copy of the  
50 application. After the answer is filed, the appellate court shall either grant or deny the  
51 application. If the application is granted, the trial court clerk must file the record on appeal  
52 within 30 days from the date of entry of the order granting permission to appeal or within  
53 such other period as the appellate court may direct. The appellate court shall advise the  
54 parties of the dates on which briefs are to be filed, if briefs are required, and of the date of  
55 oral argument, if oral argument is granted.

56 \* \* \* \*

58           Subdivision (d) was amended to clarify the procedure to be followed when the  
59 appellate court orders the filing of an answer to the application for extraordinary appeal by  
60 permission. As amended, the subdivision provides that the appellate court shall either grant  
61 or deny the application after the answer is filed, which conforms the text of the rule to the  
62 actual practice followed by the appellate courts. The subdivision also was amended to  
63 provide that the record on appeal must be filed by the trial court clerk within 30 days of the  
64 order granting permission to appeal or within such other period as the appellate court may  
65 direct.

*proposed*

66 TENNESSEE RULES OF APPELLATE PROCEDURE

67 RULE 11

68 APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT

69 [Amend subdivision (f) as indicated below (deleted text is overstricken and new text is  
70 underlined):]

71 \* \* \* \*

72 (f) Briefs: — Except as provided in the next paragraph, if ~~If~~ permission to appeal is  
73 granted, the appellant shall serve and file his or her brief within 30 days after the date on  
74 which permission to appeal was granted. If the appellant files a brief with the application for  
75 permission to appeal as provided in subdivision (b) of this rule, he or she may also file a  
76 supplemental brief, which shall likewise be served and filed within 30 days after the date on  
77 which permission to appeal was granted. Except by order of the Supreme Court, the  
78 argument in a supplemental brief shall not exceed 25 pages. If available, the color of the  
79 cover of a supplemental brief shall be blue. An appellant who elects not to file a  
80 supplemental brief shall, within 30 days after the date on which permission to appeal was  
81 granted, file with the clerk of the appellate court and serve on the appellee notice of the  
82 appellant's election not to file a supplemental brief; if the appellant fails to file a notice within  
83 30 days, the appellee's time runs from the 30th day after permission to appeal was granted.



84 If the Supreme Court grants an application for permission to appeal from the denial  
85 of a Tenn. R. App. P. 9 application, the appellant shall serve and file his or her brief within  
86 30 days after the date on which the record on appeal is filed pursuant to Tenn. R. App. P.  
87 9(e). The briefs filed in such cases shall otherwise be governed by this subdivision (f).

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

*proposed*

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

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

93 *Advisory Commission Comment [2015]*

94 Subdivision (f) is amended to clarify the briefing schedule in those cases in which the  
95 intermediate appellate court denies an application for an interlocutory appeal under Tenn. R.  
96 App. P. 9 and in which the Supreme Court subsequently grants permission to appeal. The  
97 amendment provides that the appellant in such cases shall his or her brief within thirty days  
98 of the filing of the record pursuant to Tenn. R. App. P. 9(e).

99 TENNESSEE RULES OF CRIMINAL PROCEDURE

100 RULE 11

101 PLEAS

102 [Amend subdivision (b)(1) as indicated below (deleted text is overstricken and new text is  
103 underlined):]

104 (a) \* \* \* \*

105 (b) CONSIDERING AND ACCEPTING A GUILTY OR NOLO CONTENDERE PLEA.

106 (1) ADVISING AND QUESTIONING THE DEFENDANT. — Before accepting  
107 a guilty or nolo contendere plea, the court shall address the defendant  
108 personally in open court and inform the defendant of, and determine that he or  
109 she understands, the following:

110 (A) The nature of the charge to which the plea is offered;

111 (B) the maximum possible penalty and any mandatory  
112 minimum penalty;

113 (C) if the defendant is not represented by an attorney, the  
114 right to be represented by counsel – and if necessary have the  
115 court appoint counsel – at trial and every other stage of the  
116 proceeding;

117 (D) the right to plead not guilty or, having already so  
118 pleaded, to persist in that plea;

119 (E) the right to a jury trial;

120 (F) the right to confront and cross-examine adverse  
121 witnesses;

122 (G) the right to be protected from compelled self  
123 incrimination;

124 (H) if the defendant pleads guilty or nolo contendere, the  
125 defendant waives the right to a trial and there will not be a  
126 further trial of any kind except as to sentence;

127 (I) if the defendant pleads guilty or nolo contendere, the  
128 court may ask the defendant questions about the offence to  
129 which he or she has pleaded. If the defendant answers these  
130 questions under oath, on the record, and in the presence of  
131 counsel, the answers may later be used against the defendant in  
132 a prosecution for perjury or aggravated perjury; and

133 (J) if the defendant pleads guilty or nolo contendere, it  
134 may have an effect upon the defendant's immigration or  
135 naturalization status, and, if the defendant is represented by  
136 counsel, the court shall determine that the defendant has been

137            advised by counsel of the immigration consequences of a plea;  
138            and  
139                    (K) if the defendant pleads guilty or nolo contendere to  
140            an offense for which he or she will receive an additional  
141            sentence of community supervision for life, the fact that he or  
142            she will receive the additional sentence, and, if the defendant is  
143            represented by counsel, the court shall determine that the  
144            defendant has been advised by counsel of the community  
145            supervision for life sentence and its consequences.

146            (2) \* \* \* \*

147                                    *Advisory Commission Comment [2015]*

148            Subdivision (b)(1) was amended to add paragraph (K) to conform the rule to the  
149            requirements of case law. “Because the mandatory lifetime supervision requirement is an  
150            additional part of a defendant’s sentence, the trial court is constitutionally required to inform  
151            the defendant of the supervision requirement as part of the plea colloquy.” *Ward v. State*,  
152            315 S.W.3d 461, 474 (Tenn. 2010). *See also State v. Nagele*, 353 S.W.3d 112 (Tenn. 2011)  
153            (defendant allowed to withdraw guilty plea because trial court did not inform defendant of  
154            lifetime community supervision requirement and State failed to establish error was harmless  
155            beyond a reasonable doubt because defense counsel’s advice to defendant about the  
156            requirement was ambiguous); *Calvert v. State*, 342 S.W.3d 477, 491 (Tenn. 2011) (defense  
157            counsel’s failure to inform defendant about lifetime supervision requirement is deficient  
158            performance and defendant will be entitled to post-conviction relief if he establishes “by  
159            clear and convincing evidence a reasonable probability that, but for defense counsel’s failure  
160            to inform him of the mandatory lifetime community supervision aspect of his sentence, he  
161            would have declined to plead guilty”).

162 TENNESSEE RULES OF CRIMINAL PROCEDURE

163 RULE 41

164 SEARCH AND SEIZURE

165 [Amend subdivision (c) by adding the following new (c)(2) and by renumbering the current  
166 (c)(2) and (c)(3) as the new (c)(3) and (c)(4), respectively (deleted text is overstricken and  
167 new text is underlined):]

168 (a) \* \* \* \*

*proposed*

169 (c) ISSUANCE AND CONTENT OF WARRANT. —

170 (1) ISSUANCE. — \* \* \* \*

171 (2) REQUESTING A WARRANT BY TELEPHONIC OR OTHER RELIABLE  
172 ELECTRONIC MEANS. — A magistrate may issue a warrant based on  
173 information communicated by telephone or other reliable electronic means.  
174 The proposed warrant, the signed affidavit, and accompanying documents may  
175 be transmitted by electronic facsimile transmission (fax) or by electronic  
176 transfer with electronic signatures to the magistrate, who may act upon the  
177 transmitted documents as if they were originals. A warrant affidavit may be  
178 sworn to or affirmed by administration of the oath over the telephone or by  
179 other audio or audio-visual means by the magistrate. The affidavit with

180 electronic signature received by the magistrate and the warrant approved by  
181 the magistrate, signed with electronic signature, shall be deemed originals. The  
182 magistrate shall facilitate the filing of the original warrant with the clerk of the  
183 court and shall take reasonable steps to prevent tampering with the warrant.  
184 The issuing magistrate shall retain a copy of the warrant as part of his or her  
185 official records. The issuing magistrate shall forward a copy of the warrant,  
186 with electronic signatures, to the affiant.

*proposed*

187 (23) CONTENT. — \* \* \* \*

188 (34) HEARSAY. — \* \* \* \*

189 (d) \* \* \* \*

190 *Advisory Commission Comment [2015]*

191 Subdivision (c) was amended by adding a new paragraph (2) (and renumbering what  
192 are now paragraphs (3) and (4)). New paragraph (c)(2) allows a search warrant to be  
193 obtained without requiring the affiant and the issuing magistrate to be in each other's  
194 physical presence during the application/issuance process. The amendment to the rule does  
195 not alter the requirement that the affidavit be submitted to the magistrate in writing regardless  
196 of the means of transmission. Rule 41(c)(2) is intended to be construed liberally as to the  
197 method of telephonic and/or electronic transmissions as advancements in technology occur.

198 TENNESSEE RULES OF CRIMINAL PROCEDURE

199 RULE 42

200 CRIMINAL CONTEMPT

201 [Amend subdivision (b)(5) and add new subdivisions (c) and (d), as indicated below (new  
202 text is underlined):]

203 (a) SUMMARY DISPOSITION. — A judge may summarily punish a person who commits  
204 criminal contempt in the judge's presence if the judge certifies that he or she saw or heard  
205 the conduct constituting the contempt. The contempt order shall recite the facts, be signed  
206 by the judge, and entered in the record.

207 (b) DISPOSITION ON NOTICE AND HEARING. — A criminal contempt shall be initiated  
208 on notice, except as provided in subdivision (a) of this rule.

209 (1) CONTENT OF NOTICE. — The criminal contempt notice shall:

210 (A) state the time and place of the hearing;

211 (B) allow the alleged contemner a reasonable time to  
212 prepare a defense; and

213 (C) state the essential facts constituting the criminal  
214 contempt charged and describe it as such.

215 (2) FORM OF NOTICE. — The judge shall give the notice orally in open  
216 court in the presence of the alleged contemner or by written order, including  
217 an arrest order if warranted. The notice and order may also issue on  
218 application of the district attorney general, an attorney appointed by the court  
219 for that purpose, or an attorney representing a party in the case.

220 (3) RELEASE ON BAIL. — The alleged contemner is entitled to  
221 admission to bail as provided in these rules.

222 (4) DISQUALIFICATION OF JUDGE. — When the contempt charged  
223 involves disrespect to or criticism of a judge, that judge is disqualified from  
224 presiding at the hearing, except with the alleged contemner's consent.

225 (5) PUNISHMENT ORDER. — If the court finds the alleged contemner to  
226 be in contempt, the court shall enter an order setting the punishment. The  
227 court may allow the award of attorney's fees and expenses to private counsel,  
228 either retained or appointed, for the prosecution of contempts arising under this  
229 Rule where the alleged act of contempt involves the failure to pay support to



230 a spouse, former spouse, or dependent. The court may not award attorney fees  
231 or expenses in any other proceeding brought under this Rule. No fees or  
232 expenses shall be awarded to the district attorney general, the attorney general,  
233 or members of their respective staffs for the prosecution of any matter  
234 involving the failure to pay support to a spouse, former spouse, or dependent.

235 (c) PLEADING AND HEARING. — A petition charging criminal contempt shall not be  
236 joined in a pleading charging civil contempt. A charge of criminal contempt shall be heard  
237 and concluded with a finding of guilty or not guilty prior to hearing further evidence relating  
238 to a charge of civil contempt.

239 If a finding of guilty is made by the court, punishment, if any, by fine, incarceration,  
240 or both, whether suspended or not, shall be announced prior to hearing further evidence  
241 relating to a charge of civil contempt.

242 (d) DISCOVERY. — Discovery in a criminal contempt proceeding is governed by the  
243 Rules of Criminal Procedure.

244 *Advisory Commission Comment*

245 Rule 42 tracks some of the language of the federal rule. No right to a jury trial exists  
246 upon a state charge of criminal contempt under present law establishing the penalties for the  
247 offense.

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*Advisory Commission Comment [2014]*

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The reference in Rule 42(b)(2) to “a show cause order” was deleted. The burden of proof in a criminal contempt proceeding governed by subdivision (b) of the rule is on the district attorney or other attorney prosecuting the allegation of criminal contempt, and requiring an alleged contemner to “show cause” why he or she should not be held in contempt impermissibly placed the burden of proof on the alleged contemner.

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Subdivision (b)(2) also was amended to add “an attorney representing a party in the case” in order to conform the rule to current practice. This rule also guides criminal contempt proceedings arising in civil cases that involve attorneys for the parties. *See, e.g., Wilson v. Wilson*, 984 S.W.2d 898 (Tenn. 1998).

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Subdivision (b) also was amended to use the term “alleged contemner” throughout the subdivision, instead of only the word “defendant,” to prevent confusion by distinguishing the person charged with criminal contempt from a named defendant in a particular case. A party charged with criminal contempt may or may not be a named defendant in the particular case. The new term conforms the language of the rule to the terminology in *Baker v. State*, \_\_\_ S.W.3d \_\_\_, \_\_\_, 2013 WL 4768309, at \*6-7 (Tenn. 2013).

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*Advisory Commission Comment [2015]*

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Subdivision (b)(5) was amended by adding the second, third, and fourth sentences, which pertain to limiting the award of attorney fees and expenses in criminal contempt proceedings.

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Subdivision (c) was added to the rule to set out the procedure for trial courts to follow in cases in which a respondent is faced with allegations of both criminal and civil contempt. Subdivision (c) provides that a petition alleging criminal contempt cannot be joined in a pleading that alleges civil contempt. The subdivision also provides that an allegation of criminal contempt must be adjudicated to its conclusion by the trial court prior to adjudicating an allegation of civil contempt. Additionally, subdivision (c) provides that, in the event the court finds the respondent to be in criminal contempt, the court must impose any punishment before hearing further evidence relating to an allegation of civil contempt.

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Subdivision (d) was added to the rule to provide that discovery in criminal contempt proceedings is governed by the Rules of Criminal Procedure.

278 TENNESSEE RULES OF CRIMINAL PROCEDURE

279 RULE 49.1

280 FACSIMILE FILING OF PAPERS

281 [Amend subdivision (b)(2)(D) as indicated below (deleted text is overstricken and new text  
282 is underlined):]

283 (a) DEFINITIONS. —

284 \* \* \* \*

*proposed*

285 (b) FACSIMILE FILING; EXCEPTIONS. —

286 (1) \* \* \* \*

287 (2) EXCEPTION: FACSIMILE FILING NOT PERMITTED. — The following  
288 documents shall not be filed in the trial court by facsimile transmission:

289 (A) An appeal from a lower court to a circuit/criminal  
290 court;

291 (B) A notice of appeal to an appellate court;

292 (C) The affidavit of complaint for an arrest warrant or  
293 summons (see Tenn. R. Crim. Proc. 4);

294 (D) ~~Search warrants, affidavits, returns, and inventories~~  
295 ~~(see Tenn. R. Crim. Proc. 41) [Reserved];~~

296 (E) A confidential document that the court previously has  
297 ordered to be filed under seal; and

298 (F) Indictments, presentments, and informations.

299 (c) \* \* \* \* \*

300 *Advisory Commission Comment [2015]*

301 The 2015 amendment deleted the text of subdivision (b)(2)(D), which listed “Search  
302 warrants, affidavits, returns, and inventories (see Tenn. R. Crim. P. 41)” among the  
303 documents that could not be filed by facsimile transmission. The deletion of “Search  
304 warrants, affidavits, returns, and inventories” from Tenn. R. Crim. P. 49.1(b)(2) does not  
305 mean that those documents may now be filed by fax *under Tenn. R. Crim. P. 49.1*. Rather,  
306 the Commission concluded for several reasons that Tenn. R. Crim. P. 49.1 did not actually  
307 apply to the search-warrant process. The most important of those reasons is that the  
308 procedures for obtaining a search warrant are governed by Tenn. R. Crim. P. 41, and that rule  
309 was simultaneously amended to authorize the use of electronic means (including facsimile  
310 transmission) in the search-warrant process. The Commission therefore concluded that  
311 deleting the text of subdivision (b)(2)(D) (and replacing it with “[Reserved]”) would avoid  
312 any inconsistency between the two rules. The Commission further concluded that Tenn. R.

313 Crim. P. 41 properly governs the search-warrant process and that, as amended, Tenn. R.  
314 Crim. P. 49.1 no longer applies to that process, one way or the other.

315

*[end of Appendix]*

*proposed*