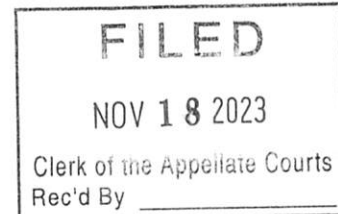


Tennessee Farmers Insurance Companies  
*Corporate Headquarters*

Phone: 931.388.7872 | Post Office Box 998 | Columbia, TN 38402-0998 | fbitn.com

November 17, 2023

Mr. James Hivner, Clerk  
Re: 2023 Rules Package  
100 Supreme Court Building  
401 7<sup>th</sup> Ave. North  
Nashville, TN 37219-1407



Re: No. ADM2023-01208 - Tenn. R. App. Proc. 31

Dear Mr. Hivner:

On behalf of Tennessee Farmers Insurance Companies and affiliates ("TFIC") and the Tennessee Farm Bureau Federation, I want to express my appreciation for the Advisory Commission's request for comments on the proposed amendments. We respectfully seek your consideration of our comments regarding the practical effect of the Advisory Commission's proposed changes to Rule 31 of the Tennessee Rules of Appellate Procedure ("Rule 31").

The proposed amendment to Rule 31 requires conditional filing of an amicus brief with the motion for leave to participate and sets deadlines for filing correlated with the filing of briefs by parties to the case. Currently under Rule 31 there is wide latitude, perhaps too much, in the ability of interested persons or entities to request leave to participate in appellate proceedings, as well as significant discretion for the appellate courts to grant such requested leave. We understand that, for judicial economy, perhaps that latitude should be constrained, but we believe appropriate discretion should still be provided to the appellate courts.

I serve as the General Counsel for both TFIC, which includes Tennessee Farmers Mutual Insurance Company, the insurer of more homes and automobiles than any other carrier in Tennessee, and Tennessee Farmers Life Insurance Company, the number one writer of individual life insurance in Tennessee, and the Tennessee Farm Bureau Federation, which includes over 680,000 family memberships, approximately one-third of all Tennesseans. We serve members and customers in every county in the state; we have offices in every county in the state; and we defend insureds in every judicial district in the state. Our entities are active in legislative matters, following and advocating for and against bills each year that could affect agriculture, education, insurance, employment laws, and any number of issues related to the operation of farming and insurance businesses in our great state.

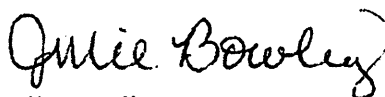
With leave of the respective courts, we have participated as amicus parties in narrow issues of interest to our organizations over the years. Our participation has come about in many

ways: sometimes a party has notified us of an issue that might be of interest to one of our organizations; sometimes we are closely monitoring litigation related to a particular statute or type of case; and sometimes we are made aware of an argument or proposal made by a party that would have a detrimental effect on our businesses or those of our members. We hope our participation has been helpful in providing information, history, practical effects, and useful legal interpretations to the courts. In those cases, we were lucky that an issue was brought to our attention in time to be able to file an amicus brief with the appropriate appellate court. Under the proposed rule, I am not certain our organization or others like it will be able to timely determine the need and ability to participate in a matter and complete the request for leave and a brief of the caliber we expect to file to be helpful to the court in the timeframe allotted by the rule.

While our organizations recognize that the proposed amendments to Rule 31 align with Rule 29(a)(6) of the Federal Rules of Appellate Procedure, it is not clear whether the standard of Tennessee Rule 21(b) (allowing an appellate court to enlarge time prescribed by the rules for good cause shown) applies to these new timeframes. The notes of the Advisory Committee on 1998 Amendments to Federal Rule 29 confirm that the good cause standard for allowing extension of time in Federal Rule 26(b) applies to amicus filings.<sup>1</sup> We suggest that the Advisory Commission Comment affirm that the good cause standard of Tennessee Rules of Appellate Procedure 21(b) applies to these new timeframes or alternatively, explicitly set forth the standard for an enlargement of time in Rule 31. A marked draft with one option for including the standard within the rule is attached for your consideration.

Thank you for the opportunity to share my thoughts on this matter with the Committee and your efforts to craft well-considered, fair rules for our appellate court system.

Very truly yours,



Julie Bowling  
General Counsel

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<sup>1</sup> "The former rule's statement that a court may, for cause shown, grant leave for later filing is unnecessary. Rule 26(b) grants general authority to enlarge the time prescribed in these rules for good cause shown. This new rule, however, states that when a court grants permission for later filing, the court must specify the period within which an opposing party may answer the arguments of the amicus." F. R. Civ. Proc. 29, Notes of Advisory Committee on 1998 Amendments, *Note to Subdivision (e)*.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 31

BRIEF AND ORAL ARGUMENT OF AN AMICUS CURIAE

[Amend Rule 31 as indicated below:]

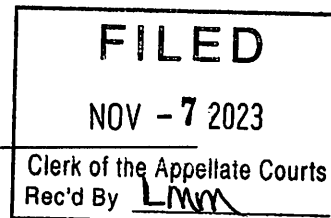
Rule 31. Brief and Oral Argument of an Amicus Curiae.

(a) Leave or Request of Court Necessary. A brief of an amicus curiae may be filed only by leave of court granted on motion or at the request of the appellate court. ~~A brief may be conditionally filed with the motion for leave.~~ A motion for leave shall identify the interest of the applicant and shall state how a brief of an amicus curiae will assist the appellate court. The brief shall be conditionally filed with the motion for leave unless the appellate court allows the brief to be filed later for good cause shown.

(b) Form; Time; Conditions. A brief of an amicus curiae shall follow the form prescribed for the brief of an appellee. ~~The court shall fix the time and conditions for the filing of the amicus curiae brief.~~ An amicus curiae shall file its brief, accompanied by a motion for leave to file, no later than 7 days after the brief of the party being supported has been filed, unless the appellate court allows the brief to be filed later for good cause shown. An amicus curiae that does not support either party shall file its brief and motion for permission to file no later than 7 days after the appellant's brief has been filed unless the appellate court allows the brief to be filed later for good cause shown. If an appellant serves and files its brief with its application for permission to appeal as permitted under Rule 11(b), an amicus curiae supporting the appellant shall file its brief no later than 7 days after the appellant has filed its supplemental brief as permitted under Rule 11(f) or, if the appellant elects not to file a supplemental brief, the amicus curiae shall file its brief no later than 7 days after the appellant files notice of its election not to file a supplemental brief as required under Rule 11(f) unless the appellate court allows the brief to be filed later for good cause shown. If later filing of an amicus brief is granted, ~~the court may grant leave for later filing of an amicus brief, specifying the time within which an opposing party may answer.~~

**Lisa Marsh - Comment on Proposed Amendments - ADM2023-01208**

**From:** Cheryl Siler <cheryl.siler@aderant.com>  
**To:** "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>  
**Date:** 11/7/2023 2:30 PM  
**Subject:** Comment on Proposed Amendments - ADM2023-01208



Hello,

I am writing to comment on the proposed amendments to the Tennessee Rules that are currently posted for review.

Proposed Rule of Appellate Procedure 31(b) states, in part, "An amicus curiae shall file its brief, accompanied by a motion for leave to file, no later than 7 days after the brief of the party being supported has been filed. An amicus curiae that does not support either party shall file its brief and motion for permission file no later than 7 days after the appellant's brief has been filed."

At a minimum, it appears there is a word missing from the sentence "An amicus curiae that does not support either party shall file its brief and motion for permission file no later than 7 days after the appellant's brief has been filed." It seems the word "to" should be inserted after "permission" and before "file."

However, I would suggest that the proposed language in this sentence be revised further to change "motion for permission" to "motion for leave." This would provide consistent language throughout the rule and avoid any unnecessary confusion. For instance, "An amicus curiae shall file its brief, accompanied by a motion for leave to file, no later than 7 days after the brief of the party being supported has been filed. An amicus curiae that does not support either party shall file its brief and motion for ~~permission~~ leave to file no later than 7 days after the appellant's brief has been filed."

Thank you for your time.

**Cheryl Siler**  
Director, Docketing Operations

Direct: +1-209-431-4397  
Email: cheryl.siler@aderant.com

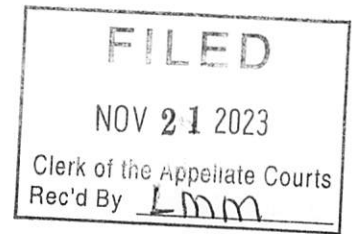
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November 20, 2023



VIA E-Mail: [appellatecourtclerk@tncourts.gov](mailto:appellatecourtclerk@tncourts.gov)

James Hivner, Clerk of Appellate Courts  
Tennessee Supreme Court  
100 Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

Re: No. ADM2023-01208

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") Professionalism Committee ("Committee") carefully considered the proposed changes to the Tennessee Rules of Appellate ("TRAP"), Civil ("TRCP"), Criminal, and Juvenile Procedure and the Tennessee Rules of Evidence, at its September and November 2023 meetings. The Committee presented a report of its review of the Order and proposed amendments at the November 15, 2023 meeting of the KBA Board of Governors (the "Board").

After consideration, the Board provides the following comments:

**Proposed Amendment to TRAP 30**

The Board recommends that the proposed Advisory Commission Comment to Tennessee Rule of Appellate Procedure 30 be moved to the text of the rule itself. The Board believes that the comment is an important clarification and that putting the comment in the Rule will make it more likely that attorneys do not overlook that requirement.

**Proposed Amendment to TRAP 31**

The Board supports the proposed amendment to Rule 31, which governs the procedure for seeking leave to file amicus curiae briefs. Although the deadlines for filing proposed amicus briefs seem abbreviated, the Committee believes it will be beneficial to have deadlines and to require a proposed amicus brief to be filed with a motion for leave.

**Proposed Amendment to TRCP 43**

The Board feels that the existing Rule 43.01 and Tennessee Supreme Court Rule 55 already adequately address the matter of testimony in open court by contemporaneous audiovisual transmission. Also, because the proposed amendments have lengthy procedures, tight deadlines, and some uncertainty as it relates to the signed statement that must be obtained from the remote witness, the proposed amendments may discourage, rather than encourage, the use of testimony in open court by contemporaneous audiovisual transmission. To that extent, the Board feels that the proposed amendments are inconsistent with Supreme Court Rule 55.

**Knoxville Bar Association**  
505 Main Street, Suite 50  
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[www.knoxbar.org](http://www.knoxbar.org)

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**Executive Director**

Marsha S. Watson

[mwatson@knoxbar.org](mailto:mwatson@knoxbar.org)

Knoxville Bar Association  
Comment Re: No. ADM2023-01208  
Page 2

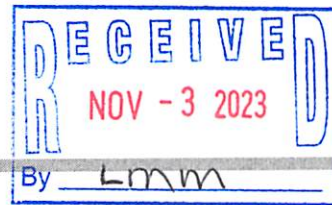
As always, the KBA appreciates the invitation to consider and comment on proposed rule changes.

Sincerely,

A handwritten signature in black ink that reads "Loretta G. Cravens". The signature is written in a cursive, flowing style.

Loretta G. Cravens, President  
Knoxville Bar Association

cc: Marsha Watson, KBA Executive Director (via e-mail)  
Executive Committee of the Knoxville Bar Association



Lisa Marsh - No. ADM2023-01208

**From:** "Paul J. Krog" <pkrog@bulso.com>  
**To:** "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>  
**Date:** 11/3/2023 3:33 PM  
**Subject:** No. ADM2023-01208

Dear Mr. Hivner:

I must write in opposition to the proposed revision to Tennessee Rule of Civil Procedure 43.01. I do so for four reasons.

First, any provision for the nonconsensual presentation of remote testimony must account for the provisions of Rule of Evidence 804 concerning witness unavailability. The current proposal fails to do so. It cannot be the case that a witness who, at the time in question, is "unavailable" as a matter of law under Rule 804(a), can nevertheless be heard to testify.

Second, Justice Cardozo was mistaken to think that attempting to distinguish between accidental means and accidental results would plunge the law into a Serbonian Bog. That effect will result, rather, from efforts to apply a twenty-two-part factoring test. A standard with twenty-two factors is no standard at all. The proposed Rule provides no hope whatsoever of consistency in application, certainty in outcome, or explication through interpretation. It is, by nature, monstrous and unwieldy and will ever remain so. If we must have remote testimony, let us have it. But by no means let us have an alphabet soup masquerading as a legal rule.

Third, the provisions in proposed (b)(iv)(B) are fictitious: the courts cannot presume to possess any practically efficacious contempt power over individuals located in foreign jurisdictions, certainly not unless the executive will employ the extradition process for the purpose of subjecting such persons to ten days in jail and a fifty-dollar fine. This provision makes a promise that the daily realities of judicial proceedings cannot fulfill.

Fourth and finally, the Court should by no means institutionalize the propriety of such remote testimony. The trial process occurs in person, and without belaboring the point, videoconferencing is not the same thing. The belief in the equivalence of live and video participation, though faddish, lacks either philosophical or empirical support.

I remain, with thanks for your and your office's assistance,

Sincerely yours,

Paul Krog  
No. 29263

Paul J. Krog, Attorney  
155 Franklin Road, Suite 400 / Brentwood / TN / 37027  
D: (615) 913-5130 / T: (615) 913-5200 / F: (615) 913-5150  
pkrog@bulso.com / bulso.com

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 31

BRIEF AND ORAL ARGUMENT OF AN AMICUS CURIAE

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