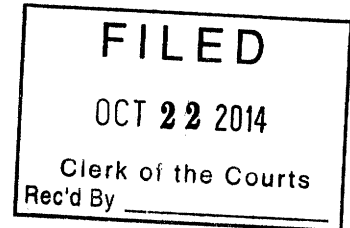


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE RULE 12, SECTION 4,
RULES OF THE TENNESSEE SUPREME COURT

No. ADM2014-02063



ORDER

Rule 12, Rules of the Tennessee Supreme Court, establishes procedures in capital cases. Section 4 of the Rule governs the setting of execution dates at the conclusion of the standard three-tier appeals process. The Court is considering amendments to Section 4(A) and Section 4(E) of Rule 12 to clarify the standards for granting or denying a motion by the State to set an execution date, and for granting a death row prisoner's motion for stay or delay of execution for pending state or federal court litigation of collateral issues.

The Appendix to this order sets out the proposed amendments to Rule 12, Section 4(A) and Section 4(E). The Court hereby solicits written comments from judges, lawyers, bar associations, members of the public, and any other interested parties concerning the proposed amendments. The deadline for submitting written comments is Tuesday, January 20, 2015. Written comments should be addressed to:

James Hivner, Clerk
Re: Rule 12, Section 4
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should include the docket number set out above.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order, including the Appendix, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

[The proposed amendments to Tenn. Sup. Ct. R. 12, § 4(A) and (E) are indicated below by underlining (new text) and ~~overstriking~~ (deleted text); in addition, the new Explanatory Comment set out below would be added to the existing Explanatory Comment (following the text of Rule 12).]

1 Rule 12. First-Degree Murder Trial Reports and Appeals in Capital Cases.

2 ***

3 4. Setting Execution Date at Conclusion of Standard Three-Tier Appeals Process.

4 (A) Motion/Response.

5 After a death-row prisoner has pursued at least one unsuccessful challenge to the
6 prisoner's conviction and sentence through direct appeal, state post-conviction, and federal
7 habeas corpus proceedings, the State Attorney General shall file a motion requesting that this
8 Court set an execution date. The motion shall include a brief summary of the procedural
9 history of the case demonstrating that the prisoner has completed the standard three-tier
10 appeals process. The motion shall be considered premature if filed prior to the expiration of
11 the time for filing a petition for writ of certiorari or a petition to rehear the denial of a petition
12 for writ of certiorari in the United States Supreme Court.

13 Any response in opposition to the motion shall be filed within ten (10) days after the
14 motion is filed and shall assert any and all legal and/or factual grounds why the execution
15 date should be delayed, why no execution date should be set, or why no execution should
16 occur, including a claim that the prisoner is not competent to be executed, *see Coe v. State*,
17 17 S.W.3d 191 (Tenn. 2000); *Van Tran v. State*, 6 S.W.3d 257 (Tenn. 1999); or a request for
18 a certificate of commutation pursuant to Tenn. Code Ann. § 40-27-106, *see Workman v.*
19 *State*, 22 S.W.3d 807 (Tenn. 2000). Unless otherwise ordered by the Court, no reply to the
20 response is required. The Court will not delay setting an execution date pending resolution
21 of collateral litigation in federal court. The Court will not delay setting an execution date
22 pending resolution of collateral litigation in state court unless the prisoner can prove a
23 significant possibility of success on the merits in that litigation.

24 (B) Designation of Attorney of Record.

25 In the motion and the response, the State and the prisoner shall designate an attorney
26 of record upon whom service shall be made. In addition to the name of the attorney of record,
27 the motion and response shall include the mailing address, E-mail address, if available,
28 telephone number, and facsimile number, if available, of the attorney of record. The motion

29 and response shall indicate the means by which the attorney of record prefers to be notified
30 of orders or opinions of the Court. The Appellate Court Clerk shall notify the attorney of
31 record and provide him or her a copy of any and all orders and opinions issued by this Court
32 in the matter. The attorney of record shall be responsible for notifying co-counsel and
33 providing copies of any and all orders and opinions to co-counsel.

34 (C) Place of Filing/Number of Copies/Service.

35 Regardless of the Grand Division in which the case originated, the motion, response,
36 and all subsequent filings in the matter shall be filed with the Office of the Appellate Court
37 Clerk in Nashville. If the motion, response or any other filing in the matter exceeds fifty
38 pages in length, a syllabus summarizing the contents shall accompany the filing. In addition
39 to an original copy of the motion, response or other filing, an electronic copy of the filing
40 shall be submitted to the Clerk at the time of filing by e-mail, in Adobe.pdf format.

41 Filing shall not be timely unless the documents are RECEIVED by the Clerk within
42 the time fixed for filing. Mailing the papers within the time fixed for filing by certified return
43 receipt mail or registered return receipt mail shall NOT be considered timely filing. Copies
44 of all filings shall be served upon the opposing attorney of record contemporaneously with
45 their filing, either by hand delivery, facsimile, or E-mail.

46 (D) Computation of Time Periods.

47 In computing the time periods for filing, the day of the event, i.e., filing of the motion
48 or filing of the response to the motion, is not to be included in the computation. Moreover,
49 if the last day of the period for filing is a Saturday, a Sunday, a legal holiday, or a day when
50 the Clerk's office for filing is closed, the period runs until the end of the next day which is
51 not a Saturday, a Sunday, a legal holiday, or a day when the Clerk's office is closed. In all
52 other circumstances, Saturdays, Sundays, legal holidays, and days when the Clerk's office
53 is closed for filing are included in the computation of the time periods.

54 (E) Date of Execution/Stays and Reprieves.

55 Upon the grant of a State's motion to set an execution date, the Court shall set the
56 date of execution no less than thirty (30) days from the date of the order granting the State's
57 motion. Where the date set by the Court for execution has passed by reason of a stay or
58 reprieve, this Court shall sua sponte set a new date of execution when the stay or reprieve is
59 lifted or dissolved, and the State shall not be required to file a new motion to set an execution
60 date. In the latter event, any new date of execution shall be no less than seven (7) days from
61 the date of the order setting the new execution date.

