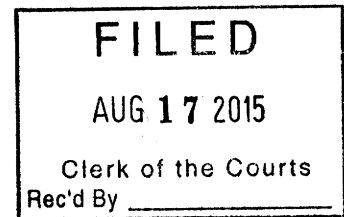


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE PROPOSED REVISION OF RULE 46,
RULES OF THE TENNESSEE SUPREME COURT
("E-FILING RULE")**

No. ADMIN2015-01511



AMENDED ORDER

On August 12, 2015, the Court filed an order regarding a proposed revision of Rule 46, Rules of the Tennessee Supreme Court, and soliciting public comments on the proposal. The Court hereby amends that order to provide that written comments may be sent to the Appellate Court Clerk either by regular mail or by electronic mail ("e-mail"). (The proposed revision set out in the Appendix to this order is unchanged from the version set out in the appendix to the previous order.)

Rule 46 was originally adopted on July 21, 2006, and took effect on August 1, 2006. The Court's adoption of the rule resulted from the work and recommendations of the Electronic Filing Task Force established by the Court on November 18, 2004. As adopted, the rule authorized the establishment of a voluntary electronic-filing system in Tennessee's appellate courts. The rule provided for the evaluation of the e-filing system after a period of one year and for the Court then to determine whether to make e-filing mandatory in the appellate courts. For several reasons, however, the voluntary e-filing system authorized by the rule was never implemented.

The Court is considering the establishment of a new voluntary e-filing system in the appellate courts, with a long-term view toward adopting a mandatory e-filing system in the appellate courts. To that end, the Court proposes repealing the current Rule 46 in its entirety and replacing it with the revised Rule 46 set out in the appendix to this order.

The Court hereby solicits written comments regarding the revised Rule 46 from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Monday, September 28, 2015. Written comments either may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 46
Tennessee Appellate Courts
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, this order, including the appendix, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

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APPENDIX

[The proposed amendment would replace the current Tenn. Sup. Ct. R. 46 with the following revised Tenn. Sup. Ct. R. 46:]

[Proposed Revision of] Rule 46. Electronic Filing.

Introduction. The Supreme Court intends to adopt electronic filing (“e-filing”) in the appellate courts at a future date. This revised Rule 46, adopted effective [date] , is a transitional rule authorizing parties to e-file documents voluntarily until such time that the Court adopts e-filing on a permanent basis.

Section 1. General Provisions.

1.01. Definitions.

(a) “Appellate Court” or “Court” means the Tennessee Supreme Court, Tennessee Court of Appeals, or Tennessee Court of Criminal Appeals.

(b) “Clerk” means the clerk of the appellate courts.

(c) “E-filing fee” is a fee charged in connection with electronic filing that is in addition to statutory filing fees.

(d) “Document” means a motion, application, request, exhibit, brief, memorandum of law, or other instrument in paper form or electronic form which is permitted to be filed pursuant to the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, or the Rules of the Court of Criminal Appeals.

(e) “E-file” or “e-filing” means the electronic transmission of documents in cases pending in the appellate courts, using the dedicated e-filing system maintained by the clerk.

(f) “E-filing system” means a web-based system maintained by the clerk for the purpose of providing a means for e-filers to transmit documents to the clerk for filing.

(g) “Electronic signature” means a signature line beginning with an “s/” followed by the typewritten name of the signatory.

41 (h) “E-service” means the electronic transmission of e-filed documents to a party
42 or a party’s attorney through the e-filing system.
43

44 (i) “Portable Document Format” or “PDF” means the computer file format
45 developed by Adobe Systems Incorporated for representing documents in a manner that
46 is independent of the original application software, hardware, and operating system used
47 to create those documents.
48

49 (j) “Registered user” means any person listed in section 2.01 who has properly
50 registered with the clerk to e-file documents in the appellate courts.
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52 (k) “Terms-of-use agreement” means that agreement established by the clerk that
53 sets forth the parameters for use of the e-filing system by all registered users.
54

55 (l) “Transaction receipt” means an e-mail confirmation that is transmitted to an
56 e-filer after an e-filer has submitted a document to the clerk to be filed through the
57 e-filing system. The transaction receipt displays the date and time the document was
58 submitted by the e-filer. The transaction receipt may serve as the e-filer’s proof of filing.
59

60 (m) “User guide” means the court’s written guide for using the e-filing system,
61 which shall be posted as a PDF document on the appellate courts’ website
62 (<http://www.tncourts.gov/>). All e-filers should periodically check the appellate courts’
63 website for updates to the user guide.
64

65 **1.02. Application of the Rule.** This rule applies to all cases filed in the appellate
66 courts. Except as provided in this rule, any document may be e-filed that otherwise
67 would be filed in the appellate court as a paper document in accordance with the
68 Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, or the Rules
69 of the Court of Criminal Appeals. Such e-filings shall constitute the official filing of
70 such documents for purposes of the foregoing rules.
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72 The appellate court may, on motion for good cause shown or on the court’s own
73 initiative, waive any provision of this rule.
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75 **Section 2. Registered Users.**

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77 **2.01. Registered Users.** The following persons may e-file documents upon
78 completion of the registration requirements of this rule:
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80 (a) Attorneys licensed to practice law in Tennessee;
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82 (b) Attorneys admitted or who seek to be admitted pro hac vice pursuant to Tenn.
83 Sup. Ct. R. 19.

84
85 **2.02. Registration.** Any person listed in section 2.01 who desires to e-file
86 documents in the appellate courts shall register with the clerk. Upon receipt of a properly
87 executed terms-of-use agreement, the e-filing system shall generate to the registered user
88 an initial confidential log-in name and password to access the e-filing system. No
89 registered user shall knowingly authorize or permit any unauthorized person to use the
90 registered user's name or password. Except as expressly permitted in this rule, documents
91 shall be e-filed using the log-in name and password of the registered user who signed the
92 document being filed. Registration with the clerk constitutes consent by the registered
93 user to receive electronic service of all documents and electronic notices issued by the
94 appellate court or the clerk.

95
96 **2.03. Duty of Registered User to Update Contact Information.** Registered users
97 shall change their profile maintained in the e-filing system immediately upon any change
98 in the registered user's name, law firm name, delivery address, telephone number, fax
99 number, or e-mail address. E-service on an obsolete e-mail address shall constitute valid
100 service on the registered user.

101
102 **2.04. User Guide.** The clerk will provide all registered users with access to an
103 online user guide to assist them in e-filing.

104 **Section 3. Filing and Service Procedures.**

105 **3.01. Time and Effect of E-Filing.**

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107 (a) *Filed upon transmission.* Subject to acceptance by the clerk pursuant to
108 paragraph (b), any document electronically submitted for filing shall be considered filed
109 with the court when the transmission to the court's electronic filing system is completed.
110 Upon receipt of the transmitted document, the electronic filing system shall automatically
111 e-mail a transaction receipt to the electronic filer, stating that the transmission of the
112 document was completed and also stating the date and time of the document's receipt.
113 The electronic filer is responsible for verifying that the court received and filed the
114 document transmitted. Absent confirmation of receipt, there is no presumption that the
115 court received and filed the document. The transaction receipt shall serve as proof of
116 filing.
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119 (b) *Review by clerk.* The clerk may review the document to determine if it
120 conforms with the applicable filing requirements. If the clerk rejects the document for
121 filing because it does not comply with the applicable filing requirements or because any
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123 required filing fee has not been paid, the clerk must promptly send notice to the registered
124 user who filed the document; the notice must set forth the reason(s) the document was
125 rejected for filing. If the clerk rejects the filing, the clerk may, in his or her discretion,
126 give the filing party up to 3 days to correct the deficient filing; upon the filing party's
127 timely submission of a corrected filing, the filing shall relate back to the date of the initial
128 filing. Notification that the clerk has accepted the document for filing is not required.

129
130 (c) *"Filed" Stamp.* E-filed documents accepted for filing by the clerk shall have a
131 "filed" stamp affixed by the clerk. The clerk's stamp of an e-filed document must contain
132 the following: "Electronically Filed/Date and Time/Name of Clerk." This "electronically
133 filed" stamp has the same force and effect as a manually affixed "filed" stamp of the
134 clerk.

135
136 (d) *Time of filing.* Any document e-filed by 11:59 p.m. at the clerk's local time in
137 the grand division in which the appeal lies shall be deemed to be filed on that date, so
138 long as it is accepted by the clerk upon review.

139
140 (e) *Documents Filed by the Court.* The court may electronically transmit orders,
141 opinions, judgments, and other court-issued documents through the appellate courts' e-
142 filing system.

143
144 When a document electronically transmitted by the court for filing by the clerk
145 requires the signature of the judge(s), clerk, or authorized deputy clerk, the signature may
146 be reflected at the end of the document by means of an electronic signature in the format:
147 "s/ [judge's/clerk's/deputy clerk's name]," followed by the appropriate title (i.e., "Judge,"
148 "Clerk," "Deputy Clerk"). Any order, opinion, judgment, or other court-issued document
149 filed electronically without the handwritten signature of the judge(s), clerk, or authorized
150 deputy clerk but containing an approved electronic signature has the same effect as if the
151 judge or clerk had signed a paper copy of the filing.

152 153 **3.02. Format of Documents.**

154
155 (a) All e-filed documents shall be formatted in accordance with the terms-of-use
156 agreement and the applicable rules of the Tennessee Rules of Appellate Procedure, the
157 Rules of the Court of Appeals, and the Rules of the Court of Criminal Appeals governing
158 formatting of paper-filed documents in the appellate courts, except that the provisions of
159 the Rules of Appellate Procedure, the Rules of the Court of Appeals, and the Rules of the
160 Court of Criminal Appeals relating to the number of copies, the color of the cover page,
161 and the types of paper shall not apply.

163 (b) All original documents (e.g., applications, briefs, motions, memoranda of law,
164 and similar documents) that are e-filed shall be prepared through direct conversion from
165 the word processing file to Portable Document Format and not through scanning of the
166 original paper document. Notwithstanding the foregoing sentence, all attachments and
167 appendices containing photocopies of documents may be scanned into Portable
168 Document Format. E-filed PDF documents shall be text searchable, if possible.

169 **3.03. Payment of Filing Fees.**

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172 (a) All e-filed documents subject to statutory filing fees and taxes shall require
173 payment of such filing fees and taxes immediately upon filing, unless excused by the
174 court. Registered users who e-file also shall pay the e-filing fees set by the Supreme
175 Court or by statute. These filing fees must be paid with an approved form of electronic
176 payment at the time of e-filing.

177
178 (b) E-filing fees paid by the filing party are recoverable costs for purposes of
179 Tenn. R. App. P. 40(c).

180 **3.04. Signatures.**

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183 (a) *Registered User's Signature.* A registered user's use of the assigned log-in
184 name and password to submit a document electronically serves as that user's signature on
185 that document for all purposes. The identity of the registered user submitting the
186 electronically filed document must be reflected at the end of the document by means of
187 an electronic signature, followed by the user's name, business address, telephone number,
188 e-mail address, and number assigned by the Board of Professional Responsibility, if
189 applicable.

190
191 (b) *Multiple signatures.* An attorney electronically filing a document requiring the
192 signatures of multiple attorneys (e.g., stipulations) must list thereon the names of all other
193 attorney signatories and include their electronic signatures. By submitting such a
194 document, the filer certifies that each of the other attorneys has expressly agreed to the
195 form and substance of the document, and that the filer has their permission to submit the
196 document electronically. In the alternative, the filer may submit a scanned document
197 containing all necessary signatures.

198
199 (c) *Signatures Under Penalty of Perjury and Notarized Signatures.* Documents
200 required by law to include a signature under penalty of perjury, or the signature of a
201 notary public, may be submitted electronically, provided that the declarant or notary
202 public has signed a printed form of the document. The printed document bearing the

203 original signatures must be scanned and electronically submitted for filing in a format
204 that accurately reproduces the original signatures and contents of the document.

205
206 (d) *Effect of Signatures on E-Filed Documents.* Any filing made under this rule
207 shall bind the signatory as if a paper document were physically signed and filed. An e-
208 filing therefore shall function as the signatory's attestation to the truthfulness of an e-filed
209 affidavit, declaration, or certification, or as a validly signed document for any other
210 purpose under the Tennessee Rules of Appellate Procedure or other court rule.

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212 **Section 4. Electronic Service.**

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214 **4.01. Automatic Service by E-Filing System.** Upon the receipt of an e-filed
215 document, the e-filing system will automatically generate and send by e-mail a notice of
216 filing to all registered users participating in the case. This automatically generated notice
217 shall constitute proper service of the e-filed document on those registered users and shall
218 have the same legal effect as service of a paper document under Tenn. R. App. P. 20.
219 Independent service, either by paper or otherwise, need not be made on any registered
220 user. Attorneys and self-represented parties who are not registered users must be served
221 by the filing party through the conventional means of service set forth in Tenn. R. App. P.
222 20.

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224 **4.02. E-Service of Documents Filed by the Court.** The clerk's e-service on a
225 registered user of a notice, order, opinion, or judgment filed by the court shall constitute
226 proper service and shall satisfy the notice requirements of the Tennessee Rules of
227 Appellate Procedure, including the mailing requirements of Tenn. R. App. P. 5(c), 23,
228 and 38.

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230 **Section 5. Effect of Technical Failure in E-Filing.**

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232 **5.01. Motion to File Document Nunc Pro Tunc.** If the e-filing does not occur
233 because of: (1) a technical error in the transmission of the document to the clerk, which
234 error was unknown to the sending party, (2) a failure to process the electronic document
235 when received by the clerk, (3) rejection of the transmitted document by the court or
236 clerk, or (4) other technical problems experienced by either the e-filer or the clerk, the
237 court may, upon motion of the filing party, enter an order directing that the document be
238 filed nunc pro tunc to the date the document was first attempted to be filed electronically.
239 If the court directs the filing of the document nunc pro tunc, the court also shall extend
240 the date for filing any response to the delayed filing and may extend the period within
241 which any other right, duty, or other act must be performed.

243 **5.02. E-Filing System Outage.** In the event the e-filing system is offline for
244 technical reasons for a significant portion of a particular day, the clerk, in his or her
245 discretion, is authorized to issue a written declaration that the e-filing system is
246 unavailable for filing on that day, in which event all filings due on that day shall be
247 deemed to be timely if received the following day the e-filing system is online. If the
248 clerk issues such a declaration, no party is required to file a motion seeking permission to
249 file a document nunc pro tunc, pursuant to section 5.01.

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[end of Appendix]