

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

**Filed March 8, 2001**  
**ORDER**

The Internal Operating procedures of the Court of Appeals are amended by deleting all procedures heretofore adopted in their entirety and substituting therefor the following Internal Operating Procedures:

**INTERNAL OPERATING PROCEDURES OF THE COURT OF APPEALS**

1. Each section of this Court shall select its own presiding judge except that the presiding judge of the entire Court shall preside over the section where he or she resides and over any panel of which he or she is a member.
2. Each section shall sit in panels of three judges each as assigned by the presiding judge of the section.
3. If a majority of this Court or any section or panel thereof shall fail to attend any session of the Court, a judge who is present, or the clerk in the absence of all judges, may adjourn the Court from day to day.
4. Sessions for hearing oral argument and for other needful purposes may be held by each section as determined by the presiding judge of the section.
5. Cases in each section shall be heard and assigned generally in the order received, but the presiding judge of the section shall control the docketing and assignment of cases.
6. (a) This Court may consider and decide a case *en banc* when a majority of the members of this Court determine that consideration and determination by the full Court is warranted based upon the recent or pending release of an opinion which conflicts with a prior opinion of this Court that has not been reversed or disapproved by the Supreme Court. An *en banc* proceeding may be initiated by the recommendation of a majority of the judges on the panel issuing or preparing the conflicting opinion. Upon receipt of such recommendation, the presiding judge shall poll the members of this Court, and if a majority of those members who are not disqualified from deciding the case vote to hold an *en banc* hearing, the presiding judge shall convene such hearing at a convenient time and place.  
  
(b) Absent exceptional circumstances, all members of this Court shall participate in the *en banc* hearing unless disqualified for conflicts. The hearing shall proceed as scheduled notwithstanding

the unavoidable absence of one or more judges. Any judge who is unavoidably absent from the hearing may participate in the determination of the case by reviewing the tape of the oral argument.

(c) If an opinion which conflicts with a prior opinion of this Court has been issued fewer than thirty (30) days before the issuing panel makes a recommendation for an *en banc* hearing, the issuing panel shall vacate and withdraw the conflicting opinion, pending the full Court's determination on whether to consider the case *en banc*. If the *en banc* hearing is called, the conflicting opinion shall not be issued. If not more than thirty (30) days has elapsed since the issuance of the earlier of the conflicting opinions, the panel issuing the earlier opinion shall also vacate and withdraw that opinion pending reconsideration by the full Court.

(d) After hearing and consideration *en banc*, the judgment of the majority of the members of this Court participating in the case shall be entered as the judgment of this Court.

7. The presiding judge of this Court shall be elected pursuant to Tenn. Code Ann. § 16-4-104 at this Court's annual meeting for a one year term commencing on April 1 of each year. If for any reason the election for presiding judge has not taken place by April 1, the incumbent presiding judge shall continue to serve until the election takes place. The presiding judge shall serve at the will and pleasure of this Court.

8. This Court shall meet annually in January, or on such other date as the majority of this Court shall determine, at a time and place to be fixed by the presiding judge to discuss such court business as may lawfully come before it.

These Internal Operating Procedures were adopted March 5, 2001, and shall be effective from that date.

IT IS SO ORDERED.

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Houston M. Goddard  
Presiding Judge

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Ben H. Cantrell  
Presiding Judge,  
Middle Section

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W. Frank Crawford  
Presiding Judge,  
Western Section

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Herschel P. Franks

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William C. Koch, Jr.

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Alan E. Highers

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Charles D. Susano Jr.

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William B. Cain

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David R. Farmer

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D. Michael Swiney

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Patricia J. Cottrell

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Holly K. Lillard