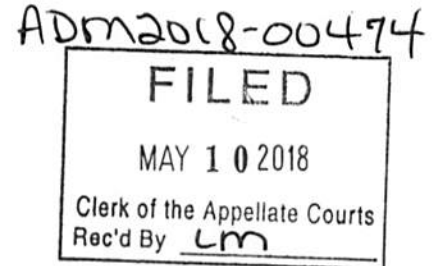




Tennessee Court Reporters Association
P.O. Box 135
Brunswick, TN 38014
(901) 388-8151
administrator@tcra.com
www.tncra.com

May 8, 2018

James M. Hivner, Clerk
Tennessee Appellate Courts
100 Supreme Court Building North
Nashville, Tennessee 37219-1407



Re: Supreme Court Rule 46

Dear Mr. Hivner,

I am writing on behalf of the Tennessee Court Reporter's Association (TCRA) with regards to the proposed Revision of Rule 46 of the Tennessee Supreme Court.

TCRA would ask that the Rule include a 90-day window between the time a record prepared by a court reporter is filed and the time that record would be accessible to an opposing party.

It is our position that the immediate accessibility, upon filing, of a court reporter's prepared transcript would be unfair and unjust to not only the court reporters in the State of Tennessee but also to the ordering attorneys who have ordered and paid for the court reporter's appearance and original transcript. The loss of revenues generated by those copy sales could greatly impact the court reporters and could ultimately result in a higher cost to the filing attorney.

As it stands now, when transcripts and exhibits are filed in the trial court, the opposing party who didn't engage the court reporter or order a copy of the proceedings, is frequently permitted to obtain copies of the transcript from the trial court clerk either free or at a nominal fee. Therefore, the situation is unfair to the party who has paid for the reporter's attendance and for the preparation of the transcript, while at the same time being unfair to the court reporter.

Again, we would respectfully ask that the Committee and/or the Court consider a provision in the Rules that would prohibit the practice in the appellate process that interferes with the goal of fairness to all parties in that process.



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Some possible solutions might include:

1. Transcripts not be downloaded from the website. Instead, a link/contact information be provided for the court reporter if a party desires to purchase a copy.
2. A policy be adopted, like the one adopted by the Judicial Conference of the United States, that prohibits for a period of 90 days of any copying or downloading (from a court's PACER system) of transcripts filed with the clerk.
3. In the event transcripts are purchased through a mechanism established by the Committee and/or the Court, the majority of those funds be paid directly to the producing court reporter.

TCRA would be pleased to discuss our concerns further. We look forward to reaching a solution to Supreme Court Rule 46 that would be fair and equitable to all parties involved.

Sincerely,

Dana Webb, LCR, CCR
TCRA President

Lisa Marsh - TCRA Response

From: Dana Webb <danawebb@alphareporting.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 5/10/2018 7:57 AM
Subject: TCRA Response
Attachments: TCRA Response to Rule 46.doc

Mr. Hivner,

Please find attached the written comments from the Tennessee Court Reporter's Association regarding Rule 46 of the Tennessee Supreme Court. The original will follow in the mail.

Also, please, confirm receipt of our response.

Sincerely,

Dana Webb

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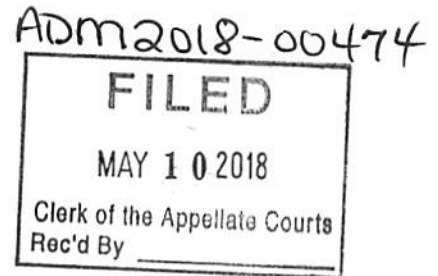
Dana Webb, LCR #109, CCR
Court Reporter



Local: (901) 523.8974
Toll Free: (800) 556.8974

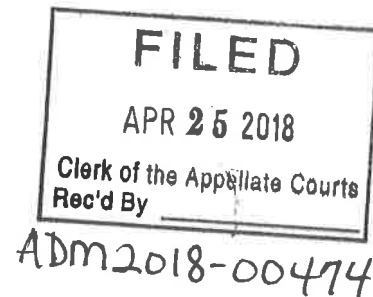


www.AlphaReporting.com



April 25, 2018

James M. Hivner, Clerk
Re: Supreme Court Rule 46
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407



Dear Mr. Hivner:

I am writing on behalf of LexisNexis, a leading provider of legal research solutions nationwide and the official publisher of the Tennessee Code Annotated, to draw your attention to a matter of great concern to our customers and thus to us.

Specifically, LexisNexis would like to raise fairness and equity concerns about the March 14, 2018 Order, In re: Revised Rule 46 Rules of the Tenn. Supreme Court, Rule 3.02 Format of Documents (a) (7), which states: *The use of external hyperlinks to legal authorities is encouraged. External hyperlinks to legal authorities should be to Westlaw or a publicly available source.*

While we believe that there was no intent on the part of the Supreme Court to endorse Westlaw over the variety of electronic legal research resources available to legal practitioners, in its current state, the Supreme Court's Revised Rule appears to do just that. We are concerned that such statements could be construed as a tacit endorsement of a particular legal research provider. No other legal information providers are referenced, including LexisNexis. Since the publication of the draft rule, we have already fielded multiple inquiries from current and potential customers on whether our product may be used.

We understand that requiring the use of a specific service may be perceived as convenient or practical based on the service the Court prefers using. However, that convenience comes at an unintended price in that it significantly distorts the market for online legal research within the jurisdiction of the relevant Court.

LexisNexis and several other companies vigorously compete to create a thriving market for online legal research. We are proud of our technology, quality and value and it is on the basis of those strengths that we want to be successful in the marketplace.

Rules which de facto or tacitly endorse one specific commercial product unfairly create a huge competitive advantage for that company and a tremendous barrier for all other legal research providers. Even though the proposed rule uses the word "should", our experience is that attorneys generally are anxious to follow the stated preference of the Court. It is our hope and belief that these barriers can and will be removed by adopting rules that guarantee free and fair competition.

Specifically, rules requiring proprietary hyperlinks/citations of one legal research vendor may directly impose extra and unnecessary costs for litigants, may actually limit fair and free judicial access due to inability to pay, or could threaten to create a research service with a virtual monopoly within a jurisdiction. Litigants may feel that they must purchase a specific research service at whatever cost it is offered in order to have adequate access to justice.

At LexisNexis, we believe that litigants should have the freedom to choose the research provider that best meets their needs. LexisNexis is therefore a strong proponent of vendor-neutral formats. At LexisNexis, we provide our customers with a variety of citation formats, including public domain citations, National Reporter System citations, etc., in order to support the researcher's choice to use the best available research service for their situation. We are confident of our content, coverage, technology and value, and we work for our customer's research business on those merits.

LexisNexis respectfully requests that Rule 3.02 (a) (7) be revised to a vendor neutral format by removing the final sentence or by other means, thus ensuring that practitioners and those seeking use of the Tennessee court system may use any online legal research provider with confidence.

Thank you for your time and consideration. I am available to discuss further by phone 937-865-7927, email leslie.metheney@lexisnexis.com or if you prefer in person to bring this matter to a mutually beneficial resolution.

Sincerely,



Leslie Metheney
Director, Government Content
LexisNexis
9443 Springboro Pike
Miamisburg, Ohio 45342

cc: Chief Justice Jeffrey S. Bivins, Chair, Tennessee Code Commission
Paige Seals, Executive Secretary, Tennessee Code Commission

Lisa Marsh - Public Comment, In re: Revised Rule 46

From: Brian Dunigan <BDunigan@poncelaw.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 3/14/2018 4:19 PM
Subject: Public Comment, In re: Revised Rule 46

In Rule 3.02, regarding Format of Documents, the proposed Rule would dictate that appellate briefs should be spaced at 1.5 lines, in 14-point type, and in "any font within the Century family."

This may be a minor nitpick from someone who cares about typesetting too much, but the vast majority of pleadings all over the state of Tennessee, both appellate and trial-level, are submitted in double-spaced format with a Times New Roman font (Times New Roman is one of the most popular and influential typefaces in history, and it is a standard typeface on most desktop computers).

I would respectfully suggest that if the Court is going to dictate a standardized font and line spacing, it would serve the interests of consistency, ease of compliance, and readability to set the standard as double-spaced format with Times New Roman font.

Brian Dunigan
Senior Attorney



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ADM 2018-00474

