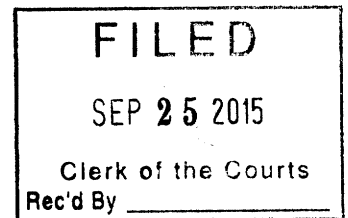


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



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

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**No. ADM2015-01511 – Filed: August 12, 2015**

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**COMMENT**

In response to the Supreme Court’s request for public comments on the proposed revision to Supreme Court Rule 42, the Access to Justice Commission (the “Commission”) strongly supports the Supreme Court’s efforts to use technology to make the court system more user-friendly. Implementing a voluntary e-filing system in the appellate courts is a positive move towards enhancing access to the judicial system. The Commission endorses a voluntary e-filing system in the appellate courts but does not support the proposed revision to the rule as written.

The Commission noted that the current proposed rule only permits attorneys who are licensed in Tennessee or attorneys admitted or who seek to be admitted pro hac vice to utilize the e-filing system. Self-represented litigants are explicitly excluded from e-filing their documents. The Commission believes that it would be beneficial to include self-represented litigants in the trial phase of e-filing to learn what issues and problems specific to them will arise and potentially resolve them prior to e-filing becoming mandatory. The Commission understands that there may be an assumption that most self-represented litigants at the appellate level are indigent and therefore will not be able to pay the associated fees with e-filing. The Commission believes that this assumption may be incorrect and in any event, the trial phase would be the best opportunity to develop the mechanism that will enable indigent parties to use the e-filing system. The Commission requests that the Supreme Court adopt a revised rule that will allow self-represented litigants to use the voluntary e-filing system.

The Commission further asks that the Supreme Court give serious consideration to the impact of mandatory e-filing on access to the court system, specifically the adverse effect on self-represented litigants who do not have access to computers and/or those who are technologically challenged. The Commission adopted Technology Principles as part of its 2012 Strategic Plan. These Principles provide guidance to the Commission to apply when evaluating new technology. The Principles state that new technology or changes in the use of current technology must not become a barrier to access or participation in the court system. The Commission hopes that the Supreme Court will evaluate the efficacy of continuing a hard copy filing option should the e-filing pilot be successful.

In addition, the Commission is supportive of projects associated with the automation of court forms that also make the judicial system more user-friendly to both attorneys and self-represented litigants who use the forms. There are other states with extensive databases of automated forms. The Commission is exploring automated forms in Tennessee. Once an automated form is completed, the next logical step is for the user to be able to e-file the document with the appropriate court. The Commission would like the Supreme Court to be aware that the technology already exists that enables automated forms software to communicate with e-filing software and permit the user to e-file their automated document. The Commission requests that as the Court moves forward with e-filing, that it consider how automated forms will play a role in the e-filing system.

Respectfully submitted,



---

Douglas A. Blaze, BPR #016356  
Chair, Tennessee Supreme Court  
Access to Justice Commission



September 28, 2015



PRESIDENT  
Bill Harbison  
150 3rd Avenue South  
Suite 1100  
Nashville, Tennessee 37201-2011  
(615) 742-4200  
FAX (615) 742-4539  
Email: bharbison@sherrardroe.com

PRESIDENT-ELECT  
Jason Long  
900 S. Gay Street  
Suite 2102  
Knoxville, Tennessee 37902-1810  
(865) 521-6527  
FAX (865) 637-0540  
Email: jhl@lyblaw.net

VICE PRESIDENT  
Lucian Pera  
6075 Poplar Avenue  
Suite 700  
Memphis, Tennessee 38119-0100  
(901) 524-5278  
FAX (901) 524-5378  
Email: lucian.pera@arlaw.com

TREASURER  
Sherie Edwards  
P.O. Box 1065  
Brentwood, Tennessee 37024-1065  
(615) 846-8205  
FAX (615) 846-6070  
Email: sheriee@svmic.com

ASSISTANT TREASURER  
Mary Dohner Smith, Nashville

SECRETARY  
Brian Winfrey  
2002 Richard Jones Rd.  
Suite B-200  
Nashville, Tennessee 37215-2809  
(615) 601-1276  
Fax: (615) 523-0200  
Email: brian@thewinfreyfirm.com

IMMEDIATE PAST PRESIDENT  
Jonathan Steen

BOARD OF GOVERNORS  
Dan Berexa, Nashville  
Hon. Jeff Bivins, Nashville  
Tasha Blakney, Knoxville  
Carl Carter, Memphis  
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Rachel Moses, Cookeville  
Donna Pierce, Sewanee  
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Michelle Sellers, Jackson  
Nathan Shelby, Jackson  
Sarah Sheppard, Knoxville  
Gary Shockley, Nashville  
Mary Dohner Smith, Nashville  
David Veile, Franklin  
Shelly Wilson, Knoxville

GENERAL COUNSEL  
Paul Ney, Nashville

EXECUTIVE DIRECTOR  
Allan F. Ramsaur, Nashville  
Email: aramsaur@tnbar.org

The Honorable James (Jim) Hivner  
Clerk, Tennessee Supreme Court  
Supreme Court Building, Room 100  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219

IN RE: PROPOSED REVISION OF RULE 46  
RULES OF THE TENNESSEE  
SUPREME COURT ("E-FILING RULE")  
NO. ADM2015-01511

Dear Jim:

Attached please find an original and one copy of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Bill Harbison, President, Tennessee Bar Association  
Hank Fincher, Chair, Tennessee Bar Association Tort and Insurance  
Practice Section  
Charles McGhee, Chair, Tennessee Bar Association Family Law  
Section  
John McCann, Chair, Tennessee Bar Association Litigation Section  
Edmund Sauer, Chair, Tennessee Bar Association Appellate Practice  
Section  
Paul Ney, General Counsel  
Tennessee Bar Association Executive Committee  
Service List

Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421 • (800) 899-6993  
FAX (615) 297-8058  
www.tba.org

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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

APPELLATE COURT CLERK  
NASHVILLE

No. ADM2015-01511

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association ("TBA"), by and through its President, William L. Harbison; General Counsel, Paul Ney; and Executive Director, Allan F. Ramsaur, files this comment expressing enthusiastic support for establishment of a voluntary electronic filing system for Tennessee appellate courts with the modifications as provided in this comment. If the Court later contemplates establishment of a mandatory system, that proposal and any changes to the rule to implement that proposal should be published for comment as was this rule for a voluntary system.

**BACKGROUND**

On August 12, 2015 this Honorable Court published proposed revisions to Tenn. Sup. Ct. R. 46 that would replace the current rule with revised Rule 46 set out in the appendix of the order.

The TBA immediately published the proposed revisions for comment and requested that several of its sections consider the proposals. Comments were provided by the Appellate Practice Section, Litigation Section, Tort and Insurance Practice Section, and Family Law Section. In addition, individual practitioners on the Executive Committee contributed to specific recommendations regarding the proposal. The TBA Executive Committee took up the matter at its regular monthly meeting on Monday, September 21, 2015, and adopted the comments which follow.

**1. SELF-REPRESENTED LITIGANTS SHOULD BE PERMITTED TO REGISTER AS REGISTERED USERS**

As proposed, only lawyers admitted to practice or *pro hac vice* would be permitted to participate as registered users in the system. In view of the TBA's and the Court's commitment to open access to Tennessee courts by self-represented litigants, the TBA proposes that self-represented litigants be permitted to register and use the system. That amendment to the proposed rule would both enable non-lawyer self-represented persons to participate in this program and allow lawyers to use the more efficient e-filing system when dealing with self-represented persons at the appellate level. The attached revision ("Exhibit A") to the order's appendix contains a redline change to the proposal to permit non-lawyer, self-represented litigants to become registered users subject to the terms of use agreement and all of the other provisions of the rule.

**2. THE RULE SHOULD NOT PROHIBIT LAWYERS FROM SHARING THEIR REGISTERED USER CREDENTIALS WITH COLLEAGUES, ASSOCIATES, LEGAL ASSISTANTS AND OTHER TRUSTED PERSONS TO FACILITATE THE PROPER USE OF THE SYSTEM.**

As proposed, Section 2.02 provides that a registered user shall not permit anyone else to use the registered users name or password. The provision appears to restrict the common and useful practice of many lawyers dealing with other electronic filing systems of authorizing other trusted colleagues and employees to electronically file matters on their behalf at their direction. Given the usual legal principles of agency and partnership, as well as the specific duties which arise under Tenn. Sup. Ct. R. 8, RPC 5.3, the registered users are responsible for those matters filed using their credentials. If the rule mandates filing only by the individual registered user, lawyers may find the voluntary system of limited utility.

**3. THE RULE SHOULD NOT PERMIT THE CLERK TO REJECT DOCUMENTS BUT SHOULD OFFER AN OPPORTUNITY TO CORRECT NON-CONFORMING FILINGS.**

The proposed rule, at Section 3.01(b), provides for a review by the clerk of a filed document to determine if it conforms with applicable filing requirements. Then the rule allows the clerk to “reject a document” if it does not conform. The paper system under which we presently file does not permit the clerk to reject filings and neither should the electronic system. Placing this responsibility and authority in the clerk is not in keeping with the clerk’s usual responsibilities relating to document

filing. The TBA's revised proposed Rule as attached would provide for the clerk to review the filings and give notice to registered users of any non-conformity in the document. The filing party would then be permitted three days to correct the deficient filing. The filing party's timely submission would relate back to the initial filing, and notification that the clerk has accepted the corrected document would be required.

**4. THE E-FILING SYSTEM SHOULD PROVIDE A METHOD TO DETERMINE REGISTERED USERS TO FACILITATE SERVICE.**

The proposed Rule, at Section 4.01, provides for automatic electronic service of the document filed through the e-filing system when others persons entitled to service in the case are registered users and for conventional service when they are not. One of the principal advantages to the e-filing system is this automatic service by the filing system. Thus the TBA is enthusiastic in support of this provision. However, the system and the rule should provide a method for those using this system to determine whether a person is a registered user so as to foster compliance with this section.

**5. SYSTEM OUTAGES SHOULD TRIGGER A NON-DISCRETIONARY DECLARATION THAT THE SYSTEM WAS UNAVAILABLE**

As proposed, when the e-filing system is offline for technical reasons for a significant portion of a particular day, Section 5.02 grants the clerk discretion to issue a written declaration that the e-filing system was unavailable for e-filing that day. As

a consequence of such a declaration all filings due that day may be deemed timely filed if received by the clerk on the following day. The TBA submits that once the clerk has determined that there has been “a significant outage” the declaration should be issued and filings received on the next day shall be deemed timely filed. There should be no discretion as to whether to accept the next day filing of the documents as timely.

**6. ALL INFORMATION FILED IN THE E-FILING SYSTEM SHOULD BE AVAILABLE TO ALL REGISTERED USERS, THE PUBLIC AND THE PRESS.**

The Constitution, rulings of this Court, and good practice demand that the courts conduct public business in public. All documents filed using the e-filing system should be available for free and open public access, and copying. Most of the other publicly available electronic filing systems offer such public access to anyone who chooses through a user identification and password system. The rule should establish a class of users whereby any individual who agreed to the terms of service could register and have search, viewing, access, and copying privileges.

**CONCLUSION**


The TBA enthusiastically supports the e-filing system and expresses its willingness to assist the Appellate Clerk in development, implementation and training on the new system.



Respectfully Submitted,

By: /s/ by permission  
WILLIAM (BILL) HARBISON (007012)  
President, Tennessee Bar Association  
Sherrod & Roe PLC  
150 3<sup>rd</sup> Avenue S., #1100  
Nashville, TN 37201  
(615) 742-4200

By: /s/ by permission  
PAUL C. NEY (011625)  
General Counsel,  
Tennessee Bar Association  
Patterson Intellectual Property Law, PC  
1600 Division Street, Suite 500  
Nashville, Tennessee 37203  
(615) 242-2400

By:   
ALLAN F. RAMSAUR (005764)  
Executive Director,  
Tennessee Bar Association  
Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421

### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "B" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

  
Allan F. Ramsaur

1 *APPENDIX* Exhibit A

2  
3 ~~[The proposed amendment would replace the current Tenn. Sup. Ct. R. 46~~  
4 ~~with the following revised Tenn. Sup. Ct. R. 46:]~~

5  
6  
7 **[Proposed Revision of] Rule 46. Electronic Filing.**

8  
9 **Introduction.** The Supreme Court intends to adopt electronic filing ("e-filing") in  
10 the appellate courts at a future date. This revised Rule 46, adopted effective [date], is a  
11 transitional rule authorizing parties to e-file documents voluntarily until such time that  
12 the Court adopts e-filing on a permanent basis.

13  
14 **Section 1. General Provisions.**

15  
16 **1.01. Definitions.**

17  
18 (a) "Appellate Court" or "Court" means the Tennessee Supreme Court, Tennessee  
19 Court of Appeals, or Tennessee Court of Criminal Appeals.

20  
21 (b) "Clerk" means the clerk of the appellate courts.

22  
23 (c) "E-filing fee" is a fee charged in connection with electronic filing that is in  
24 addition to statutory filing fees.

25  
26 (d) "Document" means a motion, application, request, exhibit, brief, memorandum  
27 of law, or other instrument in paper form or electronic form which is permitted to be filed  
28 pursuant to the Tennessee Rules of Appellate Procedure, the Rules of the Court of  
29 Appeals, or the Rules of the Court of Criminal Appeals.

30  
31 (e) "E-file" or "e-filing" means the electronic transmission of documents in cases  
32 pending in the appellate courts, using the dedicated e-filing system maintained by the  
33 clerk.

34  
35 (f) "E-filing system" means a web-based system maintained by the clerk for the  
36 purpose of providing a means for to transmit documents to the clerk for filing.

37  
38 (g) "Electronic signature" means a signature line beginning with an "s/" followed  
39 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.

51  
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 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.

71  
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.

## 74 **Section 2. Registered Users.**

75  
76  
77 **2.01. Registered Users.** The following persons may e-file documents upon  
78 completion of the registration requirements of this rule:

79  
80 (a) Attorneys licensed to practice law in Tennessee;

81

82 (b) Attorneys admitted or who seek to be admitted pro hac vice pursuant to Tenn.  
83 Sup. Ct. R. 19; and,

84 (c) Self-represented appellate litigants.

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

106  
107 **3.01. Time and Effect of E-filing.**

108  
109 (a) *Filed upon transmission.* Subject to acceptance by the clerk pursuant to  
110 paragraph (b), any document electronically submitted for filing shall be considered filed  
111 with the court when the transmission to the court's electronic filing system is completed.  
Upon receipt of the transmitted document, the electronic filing system shall automatically  
e-mail a transaction receipt to the electronic filer, stating that the transmission of the  
document was completed and also stating the date and time of the document's receipt.  
The electronic filer is responsible for verifying that the court received and filed the  
document transmitted. Absent confirmation of receipt, there is no presumption that the  
court received and filed the document. The transaction receipt shall serve as proof of  
118 filing.

119  
120 (b) *Review by clerk.* The clerk may review the document to determine if it  
121 conforms with the applicable filing requirements. If the clerk finds that a document does not comply with the  
applicable filing requirement, ~~rejects the document for~~  
122 ~~filing because it does not comply with the applicable filing requirements or because any~~

123 ~~required filing fee has not been paid,~~ the clerk must shall promptly send notice to the registered  
124 user who filed the document; ~~the notice must setting~~ forth the reason(s) the document wasdoes not conform.  
125 ~~rejected for filing. If the clerk rejects the filing, the clerk may, in his or her discretion,~~  
126 ~~give t~~The filing party shall be permitted up to three  
127 (3) days to correct the deficient filing; ~~u~~Upon the filing party's  
128 timely submission of a corrected filing, the filing shall relate back to the date of the initial  
129 filing. Notification that the clerk has accepted the conforming document for filing is ~~not~~ required.

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.* A n y 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.

162

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 P D F documents shall be text searchable, if possible.  
169

### 170 **3.03. Payment of Filing Fees.**

171  
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

### 181 **3.04. Signatures.**

182  
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.

211  
212 **Section 4. Electronic Service.**

213  
214 **4.01. Automatic Service by 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.

223  
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.

229  
230 **Section 5. Effect of Technical Failure in E-Filing.**

231  
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~~ shall 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.

250

251

252

253

*[end of Appendix]*



“Exhibit B”

Dwight Aarons  
President, National Bar Association,  
William Henry Hastie Chapter  
University of Tennessee College of Law  
1505 Cumberland Avenue, Room 363  
Knoxville, TN 37996-0681

Laurel Ball  
President, East Tennessee Lawyers  
Association for Women  
Leitner, Williams, Dooley & Napolitan  
900 S. Gay St., # 1800 Riverview Tower  
Knoxville, TN 37902

Syd Beckman  
Dean  
Lincoln Memorial University Duncan  
School of Law  
601 West Summit Hill Drive  
Knoxville, TN 37902

Mark Blakley  
President, Scott County Bar Association  
Stansberry, Petroff, Marcum & Blakley PC  
2301 Jacksboro Pike, Suite 4C  
La Follette, TN 37766-2959

Ben Boston  
President, Lawrence County Bar  
Association  
Boston, Holt, Sockwell & Durham PLLC  
P.O. Box 357  
Lawrenceburg, TN 38464

David Byrd  
President, Hamblen County Bar  
Association  
Capps, Cantwell, Capps & Byrd  
P.O. Box 1897  
Morristown, TN 37816-1897

William Cockett  
Johnson County Bar Association President  
Smith & Cockett Attorneys  
247 West Main Street, P.O. Box 108  
Mountain City, TN 37683-0108

Bratten Cook  
President, Dekalb County Bar Association  
Bratten Hale Cook II  
104 N. 3rd Street  
Smithville, TN 37166

Creed Daniel  
President, Grainger County Bar Association  
Daniel & Daniel  
115 Marshall Avenue  
P.O. Box 6  
Rutledge, TN 37861-0006

Jason Davis  
President, Marshall County Bar Association  
Davis Law Firm  
113 W. Commerce Street  
Lewisburg, TN 37091

Colby Baddour  
President, Giles County Bar Association  
A. Colbrook Baddour, Attorney at Law  
P.O. Box 296  
Pulaski, TN 38478-0296

Beth Bates  
President, Tennessee Lawyers Association  
for Women  
West Tennessee Legal Services  
P.O. Box 2066  
Jackson, TN 38302

Barri Bernstein  
Executive Director  
Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219

Tasha Blakney  
President, Knoxville Bar Association  
Eldridge & Blakney PC  
P.O. Box 398  
Knoxville, TN 37901

Charles Brasfield  
President, Tipton County Bar Association  
Brasfield & Brasfield  
114 West Liberty Avenue, P.O. Box 846  
Covington, TN 38019-0765

Karol Lahrman  
Executive Director  
Tennessee Lawyers Association for Women  
P.O. Box 331214  
Nashville, TN 37203

Curt Collins  
President, Greene County Bar Association  
C. Collins Law Firm  
128 S. Main Street, Suite 102  
Greeneville, TN 37743-4922

Chad Cox  
President, Paris-Henry County Bar  
Association  
Clark and Cox PLLC  
104 North Brewer Street  
Paris, TN 38242-4006

Wade Davies  
Immediate Past President  
Knoxville Bar Association  
Ritchie, Dillard, Davies & Johnson PC  
P.O. Box 1126  
Knoxville, TN 37901

Dawn Deaner  
Tennessee Lawyers Fund for Client  
Protection Chair  
Metropolitan Public Defender's Office  
404 James Robertson Parkway, #2022  
Nashville, TN 37219

Jeremy Ball  
President, Jefferson County Bar  
Association  
District Attorney Office  
P.O. Box 690  
Dandridge, TN 37725

Douglas Bates  
President, Hickman County Bar  
Association  
Bates & Bates  
P.O. Box 1  
Centerville, TN 37033

Julian Bibb  
President  
Tennessee Board of Law Examiners  
Stites & Harbison, PLLC  
401 Commerce Street, Suite 900  
Nashville, TN 37219

Suanne Bone  
Executive Director  
Tennessee Association of Criminal Defense  
Lawyers  
530 Church Street, # 300  
Nashville, TN 37219

Paul Bruno  
President, Tennessee Association of  
Criminal Defense Lawyers  
The Bruno Firm  
5115 Maryland Way  
Brentwood, TN 37401

Kirk Caraway  
Past President, Memphis Bar Association  
Allen, Summers, Simpson, Lillie &  
Gresham, PLLC  
80 Monroe Avenue, Suite 650  
Memphis, TN 38103-2466

Daryl Colson  
President, Overton County Bar Association  
Colson & Maxwell  
808 North Church Street  
Livingston, TN 38570-1134

Terri Crider  
President, Gibson County Bar Association  
Flippin, Atkins & Crider PC  
P.O. Box 160  
Humboldt, TN 38343

Michael Davis  
President  
Morgan County Bar Association  
216 N. Kingston Street  
P.O. Box 925  
Wartburg, TN 37887-0925

Jade Dodds  
Chapter President, National Bar  
Association, S.L. Hutchins Chapter  
Life Care Centers of America  
3001 Keith Street, NW, 3480  
Cleveland, TN 37320-3480

Dan Douglas  
President, Lauderdale County Bar  
Association  
P.O. Box 489  
Ripley, TN 38063-0489

Vinh Duong  
President, Tennessee Asian Pacific  
American Bar Association  
Waller Lansden Dortch & Davis LLP  
511 Union Street, #2700  
Nashville, TN 37210

Joseph Ford  
President, Franklin County Bar Association  
McBee & Ford  
17 S. College Street  
Winchester, TN 37398

Anne Fritz  
Executive Director  
Memphis Bar Association  
145 Court Avenue, Suite 1  
Memphis, TN 38103-2292

Sandy Garrett  
Chief Counsel  
The Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027-5078

Alberto Gonzales  
Dean  
Belmont University School of Law  
1900 Belmont Boulevard  
Nashville, TN 37212

Chris Guthrie  
Dean  
Vanderbilt University School of Law  
131 21st Ave. South, Room 108  
Nashville, TN 37203-1181

Mary Helms, President  
NE Tenn. Chapter Federal Bar Assoc.  
Wimberly, Lawson, Wright, Daves & Jones  
P.O. Box 1834  
Morristown, TN 37816

Lynda Hood  
Executive Director  
Chattanooga Bar Association  
801 Broad Street, Suite 420  
Pioneer Building  
Chattanooga, TN 37402

Tiffany Johnson  
President, Tennessee Alliance for Black  
Lawyers  
QP Legal Research & Writing Services  
1067 Fleece Place  
Memphis, TN 38104-5620

Joanna Douglass  
President, Lawyers Association for Women  
Tennessee Department of Human Services  
225 Martin Luther King Dr., #210  
Jackson, TN 38301

Matthew Edwards  
President, Cumberland County Bar  
Association  
Law Office of Matthew Edwards  
69 E. First Street, Suite 203  
Crossville, TN 38555-4575

Andrew Frazier  
President, Benton County Bar Association  
Whitworth Law Firm  
P.O. Box 208  
Camden, TN 38320

Shawn Fry  
President, Putnam County Bar Association  
Qualls & Fry PLLC  
165 E. Spring Street  
Cookeville, TN 38501

James Gass  
President, Sevier County Bar Association  
Ogle, Gass & Richardson PC  
P.O. Box 5365  
Sevierville, TN 37864

Charles Grant  
Immediate Past President, Nash. Bar Assoc.  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
211 Commerce Street, Suite 800  
Nashville, TN 37201-1817

Paul Hatcher  
President, Chattanooga Bar Association  
Duncan, Hatcher, Hixson & Fleenor PC  
1418 McCallie Avenue  
Chattanooga, TN 37404

Lela Hollabaugh  
Board of Professional Responsibility Chair  
Bradley Arant  
1600 Division Street, Suite 700  
Nashville, TN 37203

Nathan Hunt  
President  
Montgomery County Bar Association  
Patton & Pittman  
109 S. Third Street  
Clarksville, TN 37040

Susan Jones  
Napier-Looby Chapter President  
Metropolitan Department Of Law  
108 Metro Court House  
P.O. Box 196300  
Nashville, TN 37219-6300

Hilary Duke  
President, Dickson County Bar Association  
Reynolds, Potter, Ragan & Vandivort, PLC  
210 East College Street  
Dickson, TN 37055

Amber Floyd  
President, National Bar Association,  
Ben Jones Chapter  
Wyatt, Tarrant & Combs LLP  
1715 Aaron Brenner Drive, Suite 800  
Memphis, TN 38120

Jennifer Free  
Jackson-Madison-Henderson County Bar  
Association  
Byrd & Byrd PLLC  
116 N. Church St., 4<sup>th</sup> Fl., P.O. Box 2764  
Jackson, TN 38302-2764

Jonathan Garner  
President, Robertson County Bar  
Association  
Walker & Garner  
122 6th Avenue, W.  
Springfield, TN 37172

Melanie Gober  
Executive Director  
Lawyers Association for Women Marion  
Griffin Chapter  
P.O. Box 190583  
Nashville, TN 37219

Kristin Green  
President, Bedford County Bar Association  
300 E. Lane Street  
P.O. Box 461  
Shelbyville, TN 37162-0461

James Haywood  
President, Haywood County Bar  
Association  
Haywood Law, PLLC  
50 Boyd Avenue, P.O. Box 438  
Brownsville, TN 38012-0438

Martin Holmes  
Federal Bar Association  
Nashville Chapter President  
Dickinson Wright, PLLC  
424 Church Street, Suite 1401  
Nashville, TN 37219

Bill Koch  
Dean, Nashville School of Law  
4013 Armory Oaks Drive  
Nashville, TN 37204-4577

Kevin Keeton  
President, Hawkins County Bar Association  
Point & Keeton, PC  
115 E. Washington Street  
Rogersville, TN 37857-3317

Suzanne Keith  
Executive Director  
Tennessee Association for Justice  
1903 Division Street  
Nashville, TN 37203

Katherine Kroeger  
President, Anderson County Bar  
Association  
7th Jud. Dist. Office of the Public Defender  
127 N. Main Street  
Clinton, TN 37716-3607

William Lawson  
President, Unicoi County Bar Association  
112 Gay Street, Suite A  
P.O. Box 16  
Erwin, TN 37650-0016

Keating Lowery  
President, Lawyers Association for Women  
Lawrence & Russell  
5178 Wheelis Drive  
Memphis, TN 38117

Matt Maddox  
President, Carroll County Bar Association  
Attorney at Law  
P.O. Box 827  
Huntingdon, TN 38344

Lee McVey  
President, Kingsport Bar Association  
The Mcvey Law Firm  
108 E. Main St., Suite 208  
Kingsport, TN 37660

John Miles  
President, Obion County Bar Association  
P.O. Box 8  
Union City, TN 38281

Mary Morris  
Federal Bar Association,  
Memphis/Mid-South Chapter President  
Burch, Porter & Johnson, PLLC  
130 North Court Avenue  
Memphis, TN 38103

Stacy Lynch  
President, Coffee County Bar Association  
Hull, Ray, Rieder, Ewell, Lane & Lynch  
214 N.E. Atlantic Street  
Tulahoma, TN 37388

Beau Pemberton  
President, Weakley County Bar Association  
Law Office Of James H. Bradberry  
109 North Poplar Street  
P.O. Box 789  
Dresden, TN 38225-0789

Sarah Kennedy  
President, McMinn-Meigs County Bar  
Association  
Jerry N. Estes Law Offices, PLLC  
296 W. Madison Avenue  
Athens, TN 37303

Ed Lancaster  
Tennessee CLE Commission Chair  
TFIC  
P.O. Box 998  
Columbia, TN 38402

Peter Letsou  
Dean  
University of Memphis Cecil C.  
Humphreys School of Law  
1 North Front Street  
Memphis, TN 38103

Trevor Lynch  
Rutherford-Cannon County Bar  
Association  
320 W. Main Street, Suite 100  
Woodbury, TN 37190

Ian McCabe  
President, Loudon County Bar Association  
Law Office of Ian McCabe  
200 Prosperity Drive, Suite 113  
Knoxville, TN 37923

Brandon Meredith  
President, Sumner County Bar Association  
Phillips & Ingram  
117 E. Main Street  
Gallatin, TN 37066

Denny Mitchell  
President, White County Bar Association  
Mitchell Law Office  
112 South Main Street  
Sparta, TN 38583

David Myers  
President, Union County Bar Association  
105 Monroe Street  
P.O. Box 13  
Maynardville, TN 37807-0013

Tommy Parker  
President, Memphis Bar Association  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
165 Madison Avenue, Suite 2000

Creed McGinley  
Tennessee Bar Foundation Chair  
P.O. Box 548  
Savannah, TN 38372

Wayne Kramer  
President-Elect, Knoxville Bar Association  
Kramer Rayson LLP  
P.O. Box 629  
Knoxville, TN 37901

Edward Lanquist  
President, Nashville Bar Association  
Patterson PC  
1600 Division St., Suite 500  
Nashville, TN 37203

William Locke  
President, Warren County Bar Association  
General Sessions Judge  
Warren County Courthouse  
P.O. Box 228  
Mcminnville, TN 37111-0228

Monica Mackie  
Executive Director  
Nashville Bar Association  
150 4th Avenue N., Suite 1050  
Nashville, TN 37219

Judy McKissack  
Director  
Tennessee Commission on Continuing  
Legal Education  
221 Fourth Avenue North, Suite 300  
Nashville, TN 37219

Donna Mikel  
Federal Bar Association  
Chattanooga Chapter President  
Burnette, Dobson & Pinchak  
713 Cherry Street  
Chattanooga, TN 37402

Darren Mitchell  
President, Campbell County Bar  
Association  
P.O. Box 375  
Jacksboro, TN 37757

Lynn Newcomb  
President, Cheatham County Bar  
Association  
Balthrop, Perry, Noe, Newcomb & Morgan  
102 Frey Street  
Ashland City, TN 37015

Shauna Billingsley  
President, Williamson County Bar Assoc.  
City of Franklin, Law Department  
109 3<sup>rd</sup> Avenue South  
Franklin, TN 37065

Gary Wade  
Dean, Lincoln Memorial University  
Duncan School of Law  
601 W. Summit Hill Drive  
Knoxville, TN 37902

Lisa Perlen  
Executive Director  
Tennessee Board of Law Examiners  
401 Church Street  
Nashville, TN 37219

Mario Ramos  
President, Tennessee Association of  
Spanish Speaking Attorneys  
Mario Ramos PLLC  
611 Commerce Street, Suite 3119  
Nashville, TN 37203

Sunny Sandos  
President, Washington County Bar Assoc.  
West & Rose  
537 East Center Street  
P.O. Box 1404  
Kingsport, TN 37660-4869

Jim Smith  
President, Roane County Bar Association  
305 W. Rockwood Street  
Rockwood, TN 37854

Joycelyn Stevenson  
President-Elect, Nashville Bar Association  
Littler Mendelson PC  
333 Commerce Street, #1450  
Nashville, TN 37201

Mark Hartsoe  
President, Blount County Bar Association  
Hartsoe Law Firm, P.C.  
908 West Lamar Alexander Parkway  
P.O. Box 4997  
Maryville, TN 37801

Robert Thomas  
National Bar Association,  
Ballard Taylor Chapter President  
Weinman & Associates  
112 S. Liberty St., P.O. Box 266  
Jackson, TN 38302-0266

James Tucker  
President, Tennessee Defense Lawyers  
Association  
Manier & Herod PC  
150 4th Avenue N., Suite 2200  
Nashville, TN 37219

Derreck Whitson  
President, Cocke County Bar Association  
P.O. Box 1230  
Newport, TN 37822

Marsha Wilson  
Executive Director  
Knoxville Bar Association  
P.O. Box 2027  
Knoxville, TN 37901

Jennifer Porth  
President, 15<sup>th</sup> Judicial District Bar Assoc.  
J. Stephen Brown PC  
224 W. Gay Street  
P.O. Box 792  
Lebanon, TN 37088-0792

Beverly Rayburn  
President, Maury County Bar Association  
14 Public Square  
Columbia, TN 38401

Randall Self  
President, Lincoln County Bar Association  
Randall E. Self, Attorney At Law  
131A Market Street E.  
P.O. Box 501  
Fayetteville, TN 37334-0501

Abby Sparks  
President, Lawyers Association for Women  
Marion Griffin Chapter  
State of Tennessee, Department of Revenue  
500 Deaderick Street  
Nashville, TN 37242-0001

William Stover  
Immediate Past President,  
Tennessee Alliance for Black Lawyers  
500 Church Street, Suite 450  
Nashville, TN 37219-2370

Deborah Taylor Tate  
Administrative Director  
Administrative Offices of the Courts  
201 Fourth Avenue North, Suite 1900  
Nashville, TN 37219

Harriet Thompson  
President, Hardeman County Bar  
Association  
P.O. Box 600  
Bolivar, TN 38008

Tyler Weiss  
President, Monroe County Bar Association  
Worthington & Weiss, P.C.  
409 College Street N., Suite 1  
Madisonville, TN 37354-3103

John Lee Williams  
President, Humphreys County Bar  
Association  
Porch Peeler Williams Thomason  
102 S. Court Square  
Waverly, TN 37185-2113

Melanie Wilson  
Dean  
UT College Of Law  
1505 W. Cumberland Avenue, Room 278  
Knoxville, TN 37996

Ann Pruitt  
Executive Director  
Tennessee Alliance for Legal Services  
1220 Vintage Place  
Nashville, TN 37215

Kathy Rowell  
SETLAW President  
821 Houston Street, Suite 104  
Chattanooga, TN 37403

Christie Sell  
President-Elect, Chattanooga Bar Assoc.  
Hamilton County  
General Session Court Judges  
600 Market Street, 203 Courts Building  
Chattanooga, TN 37402

David Stanifer  
President, Claiborne County Bar  
Association  
Stanifer & Stanifer  
P.O. Box 217  
Tazewell, TN 37879

Stephanie Stuart  
President, Bristol Bar Association  
1990 Highway 394, Suite C  
Blountville, TN 37617

James Taylor  
President, Rhea County Bar Association  
1374 Railroad Street, Suite 400  
Dayton, TN 37321-2211

Carla Fenswick  
President, Tennessee Stonewall Bar Assoc.  
Waller Lansden Dortch & Davis, LLP  
P.O. Box 198966  
Nashville, TN 37219

Eric Buchanan  
President, Tennessee Assoc. for Justice  
P.O. Box 11208  
Chattanooga, TN 37401

Matthew Willis  
President, Dyer County Bar Association  
Ashley Ashley & Arnold  
P.O. Box H  
Dyersburg, TN 38025

Jerry Hoffer  
Jerry Hoffer Attorney at Law, P.C.  
President, Bradley County Bar Association  
140 North Ocoee Street, Suite 100  
Cleveland, TN 37311

Drew Taylor  
President, Carter County Bar Association  
211 South Main Street  
Elizabethton, TN 37643

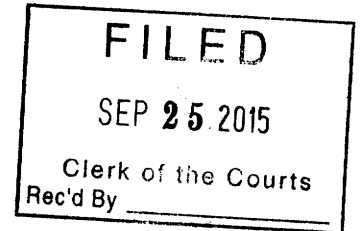
Beth S. Bates, President  
Ramona DeSalvo, Vice President  
Cheryl Rice, Immediate Past President  
Linda W. Knight, Treasurer  
Vanessa Bullock, Recording Secretary  
Angelia Nystrom, Corresponding Secretary  
Karol Lahrman, Executive Director

# TLAW

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Tennessee Lawyers'  
Association for Women

September 24, 2015



VIA EMAIL & U.S. MAIL

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

RE: NO. ADMIN2015-01511

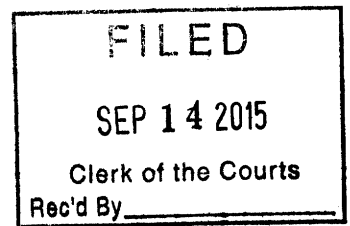
Dear Mr. Hivner:

The Tennessee Lawyers Association for Women (TLAW) appreciates the opportunity to comment on proposed rules promulgated by the Tennessee Supreme Court.

Our Board of Directors considered the proposed change to Rule 46, Rules of the Supreme Court. Several members such as President Elect Ramona DeSalvo of Nashville, Treasurer Linda Knight, and the undersigned, have had experience with electronic filing in Federal Court. Our experience has uniformly been good. TLAW supports the adoption of this rule to allow voluntary electronic filing in all Tennessee Appellate Courts.

Yours truly,

/s/Beth S. Bates  
2015-2016 TLAW President



IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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

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**No. ADM2015-01511 – Filed: August 12, 2015**

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**RESPONSE TO INVITATION FOR PUBLIC COMMENT**

In response to the Tennessee Supreme Court’s request for comment on the proposed changes to Rule 46 of the Tennessee Rules of the Supreme Court, the Executive Committee of the Tennessee District Public Defenders Conference (“Conference”) supports the Court’s ongoing effort to modernize Tennessee’s court system, and the environmentally friendly promotion of e-filing.

However, the Conference asks the Court to clarify that, under Section 3.03(a) of the proposed revision to Supreme Court Rule 46<sup>1</sup>, current processes for fee waivers or assessment of costs to the state for indigent persons will remain in effect. In addition, it is unclear what the process for e-filing in these circumstances would be, as the proposed rule requires payment of fees immediately upon e-filing by an approved form of electronic payment. Clarification as to how an indigent party would e-file if the fees have been waived or will be charged to the state would seem prudent.

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<sup>1</sup> 3.03(a) All e-filed documents subject to statutory filing fees and taxes shall require payment of such filing fees and taxes immediately upon filing, unless excused by the court. Registered users who e-file also shall pay the e-filing fees set by the Supreme Court or by statute. These fees must be paid with an approved form of electronic payment at the time of e-filing.

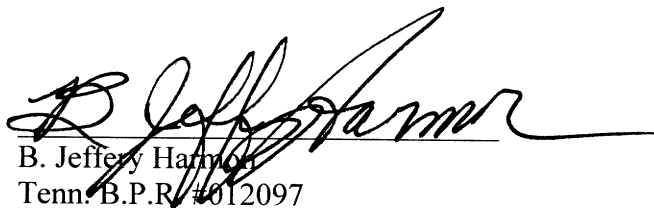
In addition, the Conference seeks clarification of Section 2.01 of the proposed revision to Tennessee Supreme Court Rule 46<sup>2</sup>. As the proposed rule is meant to be voluntary at this stage, the Conference inquires as to whether this section would need to be amended should the proposed rule become mandatory in the future. As written, the proposed Section 2.01 limits e-filing to Tennessee attorneys and *pro hac vice* attorneys. However, if the proposed rule is made mandatory at a later date, some consideration should be made for persons who may wish to proceed *pro se* at the appellate level.

The Conference reiterates its support of more economical and environmentally friendly proceedings that the proposed revision to Rule 46 promotes, and only seeks to “iron out” potential wrinkles during the revision process.

Respectfully submitted,

Executive Committee of the Tennessee District Public  
Defenders Conference

By:



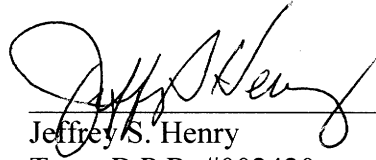
B. Jeffery Harmon  
Tenn. B.P.R. #012097  
President  
211 Seventh Avenue North, Suite 320  
Nashville, TN, 37219-1821  
Phone: 615-741-5562  
Fax: 615-741-5568  
Email: jeffery.harmon@tn.gov

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<sup>2</sup> 2.01 The following persons may e-file documents upon completion of the registration requirements of this rule: (a) Attorneys licensed to practice law in Tennessee; (b) Attorneys admitted or who seek to be admitted *pro hac vice* pursuant to Tenn. Sup. Ct. R. 19.



By:



Jeffrey S. Henry  
Tenn. B.P.R. #002420  
Executive Director  
211 Seventh Avenue North, Suite 320  
Nashville, TN, 37219-1821  
Phone: 615-741-5562  
Fax: 615-741-5568  
Email: [jeffrey.henry@tn.gov](mailto:jeffrey.henry@tn.gov)

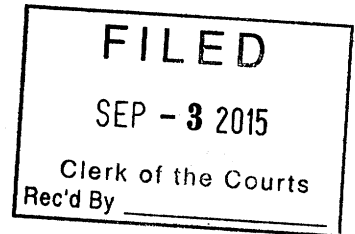
IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

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

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No. ADM2015-01511

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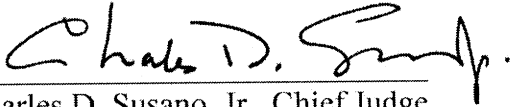


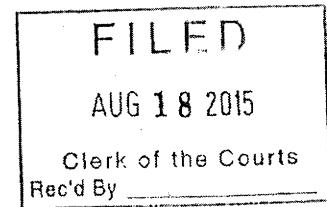
**COMMENT**

The members of the Court of Appeals of Tennessee unanimously support the proposed amendments to Tennessee Supreme Court Rule 46, believing the implementation of e-filing in the appellate courts will benefit both the bar and the courts, provided that the appellate judges, their law clerks, and staff attorneys be provided the proper tools to review e-filed PDF documents, including dual monitors, laptop/tablet hybrids, and secure wi-fi service in the three Supreme Court Buildings.

Dual monitors in particular are essential for efficient review of PDF documents while drafting opinions. Although our current monitors are sufficient for drafting opinions using printed briefs and records, our experience has shown that they are inadequate when the records or briefs are in PDF format. Laptop/tablet hybrids are also necessary, for these items will aid the court when the judges are on the bench and when they are working away from the office.

Without the appropriate tools to review PDF documents, the amendment of Rule 46 will simply shift the burden of printing briefs and other documents from the attorney's office to the judge's chambers. Thus to be effective, any implementation of the amendment of Rule 46 must be accompanied by a commitment to fund the acquisition of dual monitors and the other tools necessary for the judges and their staff to perform their duties using PDF documents rather than printed documents.

  
Charles D. Susano, Jr., Chief Judge



>>> Evan Nahmias <evan@cityllc.com> 8/18/2015 1:38 PM >>>

Jim:

The Supreme Court should not only mandate e filing on the appellate level, but should implement a statewide e-filing and docket system for all courts like Alabama, Pennsylvania, and many other states. The *variety* between individual counties (and districts) and court clerks leads to inconsistent statewide practices and increases costs to courts and litigants through mailings, storage of paper, pollution from overnighting or driving documents to the court, deforestation by virtue of printing off duplicates and file copies, and countless wasted labor hours in complying with "local" customs or rules and all of those factors impede an efficient administration of justice. By way of limited example, consider that the Knox and Shelby Counties General Sessions court clerk have completely different civil warrants (and approved circuit court cost bond formats) and while Shelby County freely gives case docket information, Davidson County requires an annual subscription costing hundreds of dollars (even if you have only one case), while Knox, Williamson, and Hamilton have little or no useful online information (the daily docket-how underwhelming). A central State run electronic filing system (akin to Mississippi's sparsely adopted and borrowed directly from the ECF/PACER style filing and docket management system) will greatly benefit the citizens, litigants, and, once they overcome the effrontery to their peculiarities, the various court clerk and judges of the State of Tennessee. Please draft Rule 46 to mandate such a system and I will gladly pay a fee for such certainty and ease (exactly like I do with the Federal PACER system).

Please let me know if I can assist in any of your endeavors.

Thanks

en

**EVAN NAHMIA**

5000 MERIDIAN BOULEVARD, SUITE 700

FRANKLIN, TN 37067

615.224.2842-DIRECT

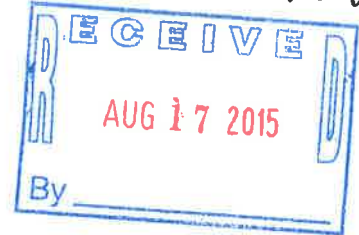
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Robert Brooks, Attorney  
2299 Union Ave  
Memphis, TN 38140  
Tel: (901) 763-2832  
Fax: (901) 726-1007  
robertbrooks@memphiscriminalappeals.com

ADM2015-01511



August 12, 2015

James M. Hivner, Clerk  
Re: Tenn.Sup.Ct.R. 46  
Tennessee Appellate Courts  
100 Supreme Court Bldg  
401 7th Ave N  
Nashville TN 37219-1407

Re: E-Filing

Dear Mr. Hivner:

I do a lot of federal criminal practice. Everything is electronic and has been for years. In the strongest possible way, I support e-filing appellate records, briefs, motions, notices, orders, and anything else. Send notices, orders, and anything else by email. Banish paper entirely. Electronic is immeasurably better in every way.

Respectfully,

  
Robert Brooks, Attorney

**From:** "Larry Rice" <larry@ricelaw.com>  
**To:** <lisa.marsh@tncourts.gov>  
**Date:** 8/13/2015 3:16 PM  
**Subject:** TN Courts: Submit Comment on Proposed Rules

**FILED**  
AUG 13 2015  
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Rec'd By \_\_\_\_\_

Submitted on Thursday, August 13, 2015 - 3:16pm  
Submitted by anonymous user: [75.145.110.244]  
Submitted values are:

Adm2015-01511

Your Name: Larry Rice  
Your Address: 275 Jefferson Ave  
Your email address: larry@ricelaw.com  
Your Position or Organization: Rice Amundsen  
Rule Change: Supreme Court Rule 30  
Docket number: Rule 46  
Your public comments: Excellent proposed rule. I wish we had it before my last appeal. Thanks for getting the ball moving again. These are the thing we need to do to bring the courts into the 21st century.

The results of this submission may be viewed at:  
<http://www.tncourts.gov/node/602760/submission/12567>