

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

09/15/2017

Clerk of the
Appellate Courts

IN RE: RULE 34, RULES OF THE TENNESSEE SUPREME COURT

No. ADM2017-00344

ORDER

By Order filed February 22, 2017, the Court solicited public comment regarding proposed amendments to Rule 34 of the Rules of the Tennessee Supreme Court. The Court has received comments from the Tennessee Bar Association (“TBA”), the Knoxville Bar Association (“KBA”), the Tennessee Association of Broadcasters (“TAB”), attorney Richard Hollow, and court reporter Sheila Wilson. The Court has carefully considered the comments received and thanks the TBA, the KBA, the TAB, Mr. Hollow, and Ms. Wilson for the same.

After due consideration, the Court hereby amends Rule 34 of the Rules of the Tennessee Supreme Court in the form set out in Appendix A to this Order. The Amendments to this Rule shall be effective immediately.

The Clerk shall provide a copy of this Order to LexisNexis and to Thompson Reuters. In addition, this Order shall be posted on the Tennessee Supreme Court’s website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX A

AMENDMENT TO TENN. SUP. CT. R. 34

[New text is indicated by underlining/Deleted text is indicated by striking]

**Rule 34. ~~Policies and Guidelines Regarding Appellate Judicial~~
Records Public Access to Court Records.**

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(1) Right to Inspect Public Records

The public has a statutory right to inspect public records maintained by government agencies of state government. Accordingly, the public has the right to inspect public records maintained by the clerk of the appellate courts the courts of this State unless the record is expressly excepted from inspection under the Public Records Act, see Tennessee Code Annotated section 10-7-504; or unless otherwise provided by state law, including this Rule and other rules of court, see Tennessee Code Annotated section 10-7-503(a)(2)(A) unless the record has been submitted under seal or is the subject of a protective order. Requests to inspect public records maintained by the clerk of the appellate courts are, however, subject to reasonable requirements and restrictions intended to preserve the integrity of the record, the parties' right to the record for the purpose of preparing their appellate papers, the courts' deliberative process, and the efficient operation of the appellate courts in accordance with Tennessee Code Annotated section 16-3-401.

(2)(A) Court Records

(A) For the purposes of these guidelines this Rule and the public records policies promulgated by the courts, a "record" includes any record defined as a "public record" in Tenn. Code Ann. § 10-7-301(6)(1992) Tennessee Code Annotated section 10-7-503(a)(1)(A) that has not been submitted under seal or that is not the subject of a protective order.

(B) Court Records include Case Records, Administrative Records, and Judicial Records.

(i) Case Record means any record created, collected, received, or maintained by the courts as a part of the official court file in connection with a particular case.

(ii) Administrative Record means any record created, collected, received, or maintained by the courts pertaining to the administration of the courts and not associated with a particular case.

(iii) Judicial Record means any record of the courts other than Case Records or Administrative Records.

~~(B) (C) The following judicial Court Records are not public records shall be treated as confidential and shall not be open for inspection by members of the public:~~

~~(i) Documents expressly excepted from inspection under the Public Records Act, Tennessee Code Annotated section 10-7-504, or otherwise excepted from inspection under state law, Tennessee Code Annotated section 10-7-503(a)(2)(A);~~

~~(ii) Written or electronic conference records, notes, memoranda, or other documents of a similar nature prepared by judges as part of the judicial decision-making process unless filed as part of the court record;~~

(vii) Documents protected from disclosure by order or rule of court, including but not limited to documents sealed pursuant to an order of the court or the subject of a protective order;

(iii) Unpublished drafts of judicial orders and opinions;

(iii) Copies, ~~other than the original~~ unless intentionally filed as part of the Case Record, of motions, petitions, briefs, and other similar documents filed with the clerks of the appellate courts that have been furnished to a individual appellate judges for their his or her personal individual use;

(iv) Written or electronic conference records, notes, memoranda, reports, or other documents of a similar nature prepared by ~~an appellate court's or judge's staff~~ a judge, judicial staff, or the Administrative Office of the Courts on behalf of, or at the direction of, a the court or judge. This includes written or electronic records, notes, memoranda, reports, or other documents of a similar nature created or received as a part of a court's the judicial or administrative decision-making deliberative process unless intentionally filed as part of the court record Case Record;

(vi) All internal case management information except for information concerning the composition of appellate case panels assigned to consider a particular case;

(vii) Information maintained by individual judges with regard to their recusal from particular cases appeals unless the information is intentionally filed as part of the ~~court~~ Case Record or unless it is subject to disclosure pursuant to Tenn. Code Ann. §§ 8-50-501, 8-50-506 ~~(1993 & Supp. 1998)~~ or Tenn. S. Ct. R. 10; and

(viii) Any other written or electronic record the disclosure of which would frustrate or interfere with the judicial function of the courts or potentially undermine the inherent constitutional powers granted the court, in addition to the powers recognized in Tennessee Code Annotated sections 16-3-501 through 16-3-504.

~~(3)(A) All requests to inspect a public record maintained by the clerk of the appellate courts shall be in writing and shall be submitted to the office of the clerk of the appellate courts in the grand division where the case is pending or was filed. Requests to inspect all or any part of an appellate record in a case that has been submitted for disposition shall also contain a brief statement of the basis or reason for the request.~~

~~(B) Inspection of all or any part of an appellate record in a case that has been submitted for disposition shall be subject to such conditions as the court deems necessary to prevent undue delay and may be deferred until the matter currently pending before the court has been decided or resolved.~~

~~(C) The clerk of the appellate courts may dispense with the written request requirement in Section (3)(A) for persons requesting readily available case history and docketing information maintained in the clerk's office, such as the date of oral argument, the identities of the parties' lawyers, and other similar information.~~

~~(4)(A) The clerk of the appellate courts shall provide timely, supervised access to public records maintained by the clerk during the regular business hours of the clerk's office. No person requesting to inspect a public record, except for persons entitled to the appellate record under~~

~~Tenn. R. App. P. 25(c), shall be permitted to remove the record from the clerk's direct custody and control.~~

~~(B) The clerk shall not be required to produce a public record that is not in the clerk's possession or to request the return of all or any part of an appellate record from any person to whom the record has been transmitted in accordance with Tenn. R. App. P. 25(c).~~

~~(5) Any person dissatisfied with the clerk's disposition of a request to inspect a public record may submit a request for review of the clerk's decision to the appropriate appellate court. The clerk shall transmit the request for review to the appropriate appellate court in a timely manner and shall promptly inform the requesting party of the court's disposition of the request for review.~~

~~(6)(A) All requests to inspect a public record maintained by the clerk of the appellate courts and requests for review of the clerk's disposition shall be treated as administrative matters for which no filing fee shall be collected.~~

~~(B) Parties requesting to inspect a public record maintained by the clerk of the appellate court may request a copy of the requested record. Copies shall be provided within a reasonable time, taking into consideration the number of copies requested and the clerk's other duties and responsibilities. The clerk shall charge a fee for preparing or copying records maintained in the clerk's office in accordance with Tenn. Code Ann. § 8-21-501 (1993).~~

Comment.

[1] Sections three (3) through six (6) of Rule 34 have been omitted. Consistent with the Public Records Act, Tennessee Code Annotated section 10-7-503(g), the Court has promulgated a separate written public records policy applicable to the appellate courts of this State, which includes the following: the process for making requests to inspect public records or receive copies of public records of the appellate courts; the process for appellate courts responding to requests, including redaction practices; a statement of any fees charged for copies of public records of the appellate courts and the procedures for billing and payment; and the name or title and the contact information of the individual or individuals within the appellate courts designated as the public records request coordinator. The trial courts similarly shall promulgate written public records policies pursuant to the Public Records Act, Tennessee Code Annotated section 10-7-503(g).

[2] The reference in section (C)(ii) of this Rule to “rule of court” is not intended to and does not include local rules of the trial courts.