

IN THE SUPREME COURT OF TENNESSEE

1. AT NASHVILLE

**IN RE:Amendment to Rule 26
Rules of the Supreme Court of Tennessee**

Filed November 13, 2001

ORDER

Supreme Court Rule 26, Order for Use of Videotape Equipment to Record Court Proceedings, is amended by deleting in its entirety and replacing it with the following:

Rule 26. Order for Use of Videotape Equipment or CD-ROM to Record Court Proceedings

Sec. 1. Scope of Order.

1.01. The provisions of this order shall apply to any court of record authorized by the Supreme Court of Tennessee to use videotape or CD-ROM equipment to record court proceedings.

Sec. 2. Record of Trial Court Proceedings.

2.01. The term "transcript" used in Rule 24, Tennessee Rules of Appellate Procedure, shall include a videotape or CD-ROM recording of court proceedings recorded and maintained in accordance with the following procedures:

(A) Videotape and CD-ROM Recordings. In court proceedings where videotape or CD-ROM equipment is available, the official record of court proceedings shall consist of two (2) videotape or CD-ROM recordings, recorded simultaneously, of the proceedings. Upon the filing of a notice of appeal, one of the two (2) videotape or CD-ROM recordings, or a court-certified copy of a portion thereof, recording the court proceeding being appealed, shall be filed and certified by the clerk as part of the record on appeal. The second videotape or CD-ROM recording shall be retained by the clerk of the trial court.

(B) Method of Identification.

(1) Official Recordings. For identification purposes, the clerk shall designate on each of the two (2) official videotape or CD-ROM recordings, on line one, the judicial district number, the name of the court, including the division in which the proceeding is being held, the number of the videotape or CD-ROM (counting all videotapes or CD-ROMs used since the start of the current calendar year), either the letter "A," if the videotape or CD-ROM is retained by the court, or the letter "B," if the videotape or CD-ROM is to be filed as the record on appeal. On the second line, the clerk shall designate the caption and case file number of the proceeding recorded on the videotape or CD-ROM (for example: Smith vs. Jones, No. 93-325) or the nature of the proceedings before the court if those proceedings pertain to more than one case (for example: criminal motions). On the third line, the clerk shall designate the date on which the videotape or CD-ROM was recorded in the form MM/DD/YY.

(2) Certified Copies. If a court-certified copy of a portion of any tape or CD-ROM is prepared

for filing as a part of the record on appeal, the first line will be marked with the judicial district number, the name of the court, including the division in which the proceeding is being held, and the word "copy." The second line will contain the caption of the case being appealed, the case file number, and the number of the source videotape or CD-ROM used to make the copy. The third line will contain the date on which the source videotape or CD-ROM was recorded.

(3) Simultaneously Made and Duplicate Copies. A party to any court proceeding may order, in advance, a simultaneously made copy of the proceeding. The cost of a simultaneously made videotape or CD-ROM shall be \$15.00 per tape or CD-ROM payable to the clerk of the appropriate court at the time the order is placed. The court shall arrange for the recording of duplicate copies of videotapes or CD-ROMs for use by counsel in preparing an appeal or subsequent proceedings. The clerk shall collect from the person requesting a duplicate videotape or CD-ROM a fee of \$30.00 for each duplicate videotape or CD-ROM requested. In cases involving parties declared to be indigent by the Court, the Administrative Office of the Courts will furnish the tapes or CD-ROMs for duplication and no fee will be assessed.

(C) Exhibit List and Trial Log. The trial judge or his/her designee shall keep a written exhibit list and log listing admission of each exhibit and the beginning and end of each witness's testimony by reference to the videotape or CD-ROM. The automatic logs of all video or CD-ROM recorded proceedings are to be maintained by the court clerk in an appropriate repository.

(D) Depositions. In a court proceeding in which videotape or CD-ROM equipment is being used to record the proceeding, the official record of a deposition admitted into evidence may be, in the trial judge's discretion, either the transcript of the deposition or the videotape or CD-ROM recording of the deposition.

Sec. 3. Procedure on Filing Notice of Appeal.

3.01. Upon the filing of a Notice of Appeal in any case in which the trial proceedings have been videotape or CD-ROM recorded, the clerk of the court shall within thirty (30) days cause to be filed the videotape or CD-ROM recording or recordings of the entire trial proceeding, unless otherwise agreed by the parties. Within fifteen (15) days after filing the Notice of Appeal, any party to the action shall cause to be filed a designation of any pre-trial or post-trial proceedings to be included in the trial record. If any party files such a designation, all other parties to the action shall have an additional fifteen (15) days to file a designation of any additional proceedings to be included. If any proceeding in any designation so filed was not videotaped or CD-ROM recorded, such designation shall be clearly marked "WRITTEN TRANSCRIPT REQUIRED." Where the pre-trial or post-trial proceedings were recorded, the clerk of the court shall, within thirty (30) days from the date the designation is filed, cause to be filed the videotape or CD-ROM recording of the designated proceedings or a certified copy thereof.

Once all videotapes or CD-ROMs or combination of videotapes or CD-ROMs and written transcripts, making up the record on appeal, have been assembled, each tape or CD-ROM or transcript will be given a volume number in chronological order of the proceedings recorded and transcribed. The clerk of court shall then proceed in accordance with Rule 25, Tennessee Rules of Appellate Procedure.

Sec. 4. Procedure on Appeal.

4.01. (A) References to Videotape or CD-ROM Recordings. The provisions of Rule 27,

Tennessee Rules of Appellate Procedure, shall apply except that reference to a volume of the trial record which is a videotape or CD-ROM recording shall be to volume number, month, day, year, hour, minute and second at which the reference begins as recorded on the videotape or CD-ROM. For example: (Vol. 2, 10/27/92; 02:24:05p). If the recording covers only a single day, the month, day and year may be omitted.

(B) Evidentiary Appendix. Rule 28, Tennessee Rules of Appellate Procedure, allowing the optional filing of a transcription of the evidence in the form of an appendix attached to an appellate brief, remains in effect. There shall appear, however, at the beginning of each segment of evidence so transcribed and at intervals of not greater than ten minutes of court time, a videotape or CD-ROM reference which corresponds to that point of the transcription.

(C) Transcription for Appellate Court. The appellate court, in its discretion, may order the preparation of a transcript of all or any portion of the videotape or CD-ROM recording. The transcript shall be prepared and filed with the clerk of the trial court within thirty (30) days from the date it is ordered and shall be approved in accordance with Tenn. R. App. P. 24(f). Within fifteen (15) days after approval, the clerk of the trial court shall prepare and transmit a supplemental record containing the transcript to the clerk of the appellate court. The appellate court may also, in its discretion, order the preparation of supplemental briefs containing references to the transcript required by Tenn. R. App. P. 27(g). The costs of the transcript and the supplemental record shall be taxed by the appellate court consistently with Tenn. R. App. P. 40.

Sec. 5. Establishment of Local Procedures.

5.01. The judges of a judicial district in which the videotape or CD-ROM equipment is used to record court proceedings may, by order, establish further procedures relating to videotape or CD-ROM recordation of court proceedings, provided such procedures do not conflict with the provisions of this order, statutory provisions or rules adopted by the Supreme Court of Tennessee, and provided, further, such procedures are approved by the Supreme Court prior to implementation.

FOR THE COURT:

Frank F. Drowota, III, Chief Justice