

IN THE SUPREME COURT OF TENNESSEE

**FILED**

August 26, 1999

Cecil Crowson, Jr.  
Appellate Court Clerk

**IN RE: ORDER ESTABLISHING SUPREME COURT RULE 34 --  
ADOPTION OF POLICIES AND GUIDELINES CONCERNING  
CUSTODY OF AND ACCESS TO APPELLATE JUDICIAL  
RECORDS.**

On November 12, 1998, the implementation committee for the Appellate Court Automation Project submitted for the Court's consideration draft guidelines governing custody of and access to appellate judicial records. These guidelines were also forwarded to the Attorney General and Reporter and to the Tennessee Press Association. After considering the comments and suggestions offered by these two entities, the implementation committee submitted a revised version of the policy and guidelines to this Court. After careful consideration, we adopt the following proposed policies and guidelines to govern custody of and access to appellate judicial records.

It is ORDERED that the Rule set forth herein be and is hereby adopted as Rule 34 of the Rules of the Tennessee Supreme Court.

**Rule 34. Policies and guidelines regarding appellate judicial records.**

(1) The public has a statutory right to inspect public records maintained by agencies of state government. Accordingly, the public has the right to inspect public records maintained by the clerk of the appellate courts 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, and the efficient operation of the appellate courts.

(2)(A) For the purposes of these guidelines, a "record" includes any record defined as a "public record" in Tenn. Code Ann. § 10-7-301(6) (1992) that has not been submitted under seal or that is not the subject of a protective order.

(B) The following judicial records are not public records:

- (i) Unpublished drafts of judicial orders and opinions;
- (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;
- (iii) Copies, other than the original, of motions, petitions, briefs, and other similar documents filed with the clerk of the appellate courts that have been furnished to individual appellate judges for their personal 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 on behalf of or at the direction of the court or judge as part of the judicial decision-making process unless filed as part of the court record;
- (v) All internal case management information except for information concerning the composition of panels assigned to consider a particular case;
- (vi) Information maintained by individual judges with regard to their recusal from particular appeals unless the information is filed as part of the court record or unless it is subject to disclosure pursuant to Tenn. Code Ann. §§ 8-50-501, -506 (1993 & Supp. 1998) or Tenn. S. Ct. R. 10;
- (vii) Documents protected from disclosure by order or rule of court; and
- (viii) Any other record the disclosure of which would frustrate or interfere with the judicial function of the courts.

(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).

FOR THE COURT:

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E. Riley Anderson, Chief Justice

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Frank F. Drowota, III, Justice

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Adolpho A. Birch, Jr., Justice

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Janice M. Holder, Justice

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William M. Barker, Justice