

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

April 22, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

IN RE: AMENDMENT TO RULE 24
RULES OF THE SUPREME COURT OF TENNESSEE
PROCEDURES GOVERNING PETITIONS FOR WAIVER OF
PARENTAL CONSENT FOR ABORTIONS ON MINORS

ORDER

Rule 24 of the Rules of the Supreme Court of Tennessee is hereby amended by deleting the text of the rule in its entirety and replacing it with the following:

Rule 24. Rules of procedure governing petitions for waiver of parental consent for abortions by minors. -- Pursuant to Tennessee Code Annotated § 37-10-304 (i), this rule is promulgated to ensure that proceedings governing petitions for waiver of parental consent for abortions by minors are conducted in an expeditious and anonymous manner.

(1) Definitions.

(a) "Act" means Acts 1988, ch. 929, as amended by Acts 1989, ch. 412, and Acts 1995, ch.458.

(b) "Applicant" means a pregnant female less than eighteen years of age and not emancipated, or a person acting as next friend on such female's behalf.

(c) "Petition" includes a motion or application.

(d) "Court" means the Juvenile Court, the Circuit Court, or the Supreme Court.

(2) Confidentiality.

(a) The proceedings governed by this Rule shall be confidential, and every effort should be made to ensure that the anonymity of the applicant is protected.

(b) The record shall be sealed. The record includes, without limitation, the petition, pleadings, submissions, transcripts, exhibits, orders, evidence, findings, and conclusions and any other written material to be maintained.

(c) Except as provided in Section 5(c) of this Rule, the identity of the applicant shall not be disclosed at any stage of the proceeding. In all documents and proceedings, the applicant shall be

identified or referred to only by the initials of her first and last name.

(d) The clerks of the various courts shall undertake to ensure that the applicant's contact with the clerk's office is confidential and expeditious to the fullest extent practicable.

(3) Precedence of the proceeding. Proceedings under this Rule shall be given such precedence over other pending matters to enable the court to render a decision within the time requirements established below.

(4) Commencement of the proceeding. The proceeding shall be commenced by filing a petition in the Juvenile Court of either the county in which the applicant resides or the county in which the abortion is sought.

(5) Content of Petition and Assistance in preparation.

(a) The petition shall contain the following:

(i) The initials of the applicant;

(ii) The age of the applicant;

(iii) A statement that the applicant has been fully informed of the risks and consequences of the abortion;

(iv) A statement whether the applicant is of sound mind and has sufficient intellectual capacity to consent to the abortion;

(v) A prayer for relief asking the court to enter an order authorizing a physician to perform an abortion upon the applicant without first obtaining parental consent;

(vi) An unsworn verification stating that the information therein is true and correct and that the applicant is aware that any false statements made in the application are a violation of Tenn. Code Ann. § 39-16-702; and

(vii) The signature of the applicant, which shall consist only of the applicant's initials.

(b) An applicant proceeding under this Rule has the right to court-appointed counsel. Upon request, the court shall immediately appoint counsel to assist the applicant in the proceeding.

(c) One copy of the petition shall contain the complete true name of the minor applicant, shall be filed with the court, and shall be kept in a separate file under

seal. This file shall not be open to inspection by anyone, except as provided in Tenn. Code Ann. § 37-10-304 (h).

(6) Form of petition. The form of the petition shall be prepared and filed in substantial conformity with the form set forth in the appendix to this Rule. Provided, that the court should not decline to decide a case brought under Tenn. Code Ann. § 37-10-304 and this Rule because of any pleading omissions or other technical defects, but should favor the disposition of the case on the merits by liberally construing the pleadings.

(7) Filing fees. No filing fees or court costs shall be required of the applicant.

(8) Dockets and Document maintenance.

(a) Each court shall maintain a separate sealed docket of proceedings under this Rule that shall not be open to public inspection. The name or initials of the applicant shall not appear on any docket that is subject to public inspection.

(b) The proceeding shall be identified in any docket open to public inspection by case number only.

(c) Documents pertaining to the proceeding shall not be entered on court minutes. They shall be maintained in a closed file which shall be conspicuously marked "SEALED MATERIALS--CONFIDENTIAL" and identified by the case number only.

(9) Record of the Proceedings.

Proceedings in the juvenile court and the circuit court shall be recorded by a court reporter, who shall maintain the anonymity of the petitioner and the confidentiality of the proceedings and the record. The expenses of reporting and transcribing the proceedings shall be paid by the state.

(10) Entry and Effects of Judgments.

A judgment or decision by the juvenile court, the circuit court, or the Supreme Court granting or denying the petition is effective immediately upon the filing thereof. The clerk of the court in which the petition is pending shall notify the applicant by delivering to her counsel a certified copy of the order. Upon entry by any court of an order granting the petition, counsel for the petitioner shall deliver a certified copy of the order to the person who will perform or induce the

abortion. The order shall become a part of the applicant's medical records. There shall be no appeal from a judgment granting the petition.

(11) Proceedings in the Juvenile Court.

(a) The case shall be heard by a juvenile court judge and not by a juvenile court referee. If a juvenile court judge is unavailable to hear the case within the time requirements established below, the case shall be immediately transferred to the Circuit Court for disposition.

(b) Upon filing of the petition, the case shall be immediately docketed for a hearing to be held as soon as the parties can be assembled, but in no event later than the next business day following the filing of the petition. The parties to the hearing should be limited to: the applicant, the applicant's counsel, the court-appointed advocate, the judge, one representative from the clerk's office, and the court reporter.

(c) The hearing shall be closed to all other persons. Witnesses shall be admitted only for the duration of their testimony. The hearing shall be held in a location where privacy can be assured and access limited. It may be held in chambers at the discretion of the court.

(d) The court should endeavor to rule at the conclusion of the hearing, but in any event shall render a decision within forty-eight (48) hours of the time of filing of the petition, weekends and holidays included, unless the applicant consents to an extension. The decision must be in writing, and must include specific findings of fact and conclusions of law. Failure to render a decision within forty-eight (48) hours shall be deemed a denial of the petition, and the applicant may immediately pursue an appeal. In the event the court does not rule at the conclusion of the hearing, the court reporter shall prepare a transcript of the hearing immediately.

(e) If the decision is not rendered immediately following the hearing, then the petitioner shall be responsible for contacting the clerk of the court for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(f) If the petition is denied or a decision is not reached within forty-eight (48) hours, an appeal may be had by filing a Notice of Appeal with the Juvenile Court Clerk. Upon receipt of the Notice of Appeal, the Juvenile Court Clerk shall

immediately hand deliver the notice of appeal and the record to the Circuit Court Clerk. The transcript of the hearing in juvenile court shall be delivered to the Circuit Court Clerk by the court reporter not later than two (2) hours prior to the time set for the hearing in circuit court.

(12) Proceedings in the Circuit Court.

(a) Upon receipt of the Notice of Appeal, the Circuit Court Clerk shall immediately docket the case.

(b) A hearing shall be held within seventy-two (72) hours of the filing of the Notice of Appeal, weekends and holidays included.

(c) The hearing shall be closed to all persons other than the following: the applicant, the applicant's counsel, the court-appointed advocate, the judge, one representative from the clerk's office, and the court reporter. The hearing shall be held in a location where privacy can be assured and access limited. It may be held in chambers at the discretion of the court.

(d) The court may hear the case de novo on the record, or require the witnesses, or some of them, to testify in person. The court may also hear additional witnesses in its discretion.

(e) The court should endeavor to rule at the conclusion of the hearing, but in any event shall render a decision within seventy-two (72) hours of the time of filing of the Notice of Appeal, weekends and holidays included, unless the applicant consents to an extension. The decision must be in writing and must include specific findings of fact and conclusions of law. Failure to render a decision within seventy-two (72) hours shall be deemed a denial of the petition, and the applicant may immediately pursue an appeal.

(f) If the decision is not rendered immediately following the hearing, then the petitioner shall be responsible for contacting the clerk of the court for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(g) The applicant may appeal the decision of the Circuit Court denying the petition directly to the Supreme Court by filing a Notice of Appeal with the Circuit Court Clerk. Upon receipt of the Notice of Appeal, the Circuit Court Clerk shall immediately transmit the Notice to the Supreme Court Clerk by facsimile. The Circuit Court Clerk shall thereafter

contact the Supreme Court Clerk telephonically to confirm that the facsimile was received.

(h) Immediately upon receipt of the Notice of Appeal, the Circuit Court Clerk shall notify the court reporter who shall prepare a transcript of the hearing in the circuit court and file it with the Circuit Court Clerk within forty-eight (48) hours of the filing of the notice of appeal. The Circuit Court Clerk shall prepare the record in accordance with Tenn. R. App. P. 24 and 25, except that the record must be completely assembled by the clerk, authenticated by the Circuit Court judge, and transmitted to the Supreme Court within five (5) business days of the filing of the Notice of Appeal. The record on appeal shall consist of the following:

- (i) The petition;
- (ii) The findings of fact, conclusions of law, and final order of the circuit court;
- (iii) Any other order relevant to the appeal and the papers upon which that other order is based;
- (iv) Exhibits material to the appeal;
- (v) Any other paper or exhibit filed in the trial court that the applicant requests be included in the record;
- (vi) The notice of appeal;
- (vii) The transcripts of the hearings in the juvenile court and the Circuit Court; and
- (viii) The certificate of the clerk.

(13) Proceedings in the Supreme Court.

(a) Upon receipt of the Notice of Appeal, the Supreme Court Clerk shall immediately notify the Chief Justice or his/her designee of the filing.

(b) Filing of a brief. The applicant shall file in the Supreme Court a brief within two (2) calendar days after the record is filed with the Court. The brief shall include copies of the orders and opinions of the lower courts, and may include those parts of the record necessary for a determination of the appeal. See Tenn. R. Civ. P. 10.03.

(c) Unless oral argument is waived, the Supreme Court shall conduct a hearing within two (2) calendar days after the brief and record are filed in the Supreme Court. When necessary because of the exigencies of the

situation, oral argument may be conducted by telephone, at the Court's discretion.

(d) Oral argument shall be deemed waived unless requested. See Tenn. R. App. P. 35.

(e) The Supreme Court shall hear the case de novo upon the record.

(f) If possible, the Supreme Court will render a decision at the conclusion of the argument, if held. In any event, the Court will render a decision no later than forty-eight (48) hours after hearing argument, or after the record and brief are filed, whichever is later, weekends and holidays included.

(g) If the decision is not rendered immediately following argument, then the petitioner shall be responsible for contacting the Supreme Court Clerk for notification of the decision. All notifications pursuant to this procedure may be informal and shall be confidential.

(h) Upon application and for good cause shown, the Supreme Court may order the time periods in this Rule reduced in order to ensure an expedited review. The requirement of good cause will be satisfied if the applicant shows that the requested relief may become unavailable and the issue will become moot by the passage of time unless the time periods are reduced.

APPENDIX TO RULE 24

IN THE _____ COURT FOR _____ COUNTY, TENNESSEE
AT _____

IN RE: (Initials of Applicant))
A minor) No. _____
)
)

PETITION FOR JUDICIAL AUTHORIZATION OF AN ABORTION
WITHOUT PARENTAL CONSENT

Comes now the applicant, _____, a minor, who respectfully states:

1. Applicant is a pregnant female, who (choose one)
 - a. is a resident of this county; or

b. seeks an abortion in this county.

2. Applicant's date of birth is _____.

3. Applicant is approximately _____ weeks pregnant.

4. The applicant desires to terminate her pregnancy and has consulted with the physician who is to perform the abortion, or with a referring physician, for that purpose the _____ day of _____, 19____. The applicant has been fully informed of the risks and consequences of the abortion.

5. Applicant consents to the abortion procedure.

6. Applicant is of sound mind and has sufficient intellectual capacity to consent to an abortion.

7. Applicant is mature and capable of giving informed consent to the proposed abortion. **AND/OR** The performance of an abortion upon the applicant would be in the applicant's best interests.

WHEREFORE, applicant prays this Honorable Court to enter an Order authorizing a physician to perform an abortion upon applicant without first obtaining parental consent.

Respectfully submitted,

(Applicant's initials)

(Signature of Counsel)

VERIFICATION

I verify that the statements made in this petition are true and correct to the best of my personal knowledge or information and belief. I understand that any false statements made herein are subject to the penalties of Tenn. Code Ann. §39-16-702 relating to perjury.

(Applicant's initials)

(Date)

It is so ORDERED this the ____ day of _____, 1997.

FOR THE COURT:

ADOLPHO A. BIRCH, JR., Chief Justice