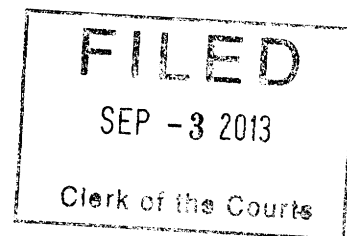


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENT TO RULE 26,
RULES OF THE TENNESSEE SUPREME COURT

No. M2013-01132-SC-RL2-RL



ORDER

Rule 26, Rules of the Tennessee Supreme Court, governs the “Use of Videotape Equipment or CD-ROM to Record Court Proceedings.” Rule 26 was first adopted in 1993 and has been amended only once, in 2001. The Sixth Circuit Court for the Twentieth Judicial District is the only Tennessee trial court operating under authority granted by the Court to electronically record its proceedings pursuant to Rule 26.

On May 13, 2013, the Court filed an order soliciting public comments on proposed amendments to Rule 26. The amendments would reflect changes in technology since the initial adoption of Rule 26 and also would update the formatting of the rule. The amendments do not expand the use of electronic recording of court proceedings to any trial court not previously granted authorization by the Court. The deadline for submitting written comments concerning the proposed amendments was June 12, 2013.

After due consideration of the comments received during the public-comment period, the Court repeals Tenn. Sup. Ct. R. 26 in its entirety and replaces it with the revised Tenn. Sup. Ct. R. 26 set out in the Appendix to this order, effective October 1, 2013.

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

IT IS SO ORDERED.

PER CURIAM

APPENDIX

REVISED TENN. SUP. CT. R. 26

[effective October 1, 2013]

Rule 26. Official Electronic Recordings of Court Proceedings

Section 1. Scope

1.01. This rule applies to any court of record authorized by the Supreme Court of Tennessee to use electronic recording equipment to record court proceedings.

Section 2. Record of Trial Court Proceedings

2.01. Use and Format of Electronic Recordings. The term “transcript” used in Rule 24, Tennessee Rules of Appellate Procedure, shall include an official electronic recording of court proceedings recorded and maintained in accordance with this rule. “Electronic recording” shall include recordings to videotape, CD-ROM, DVD, or similar electronic storage format.

2.02. Electronic Recordings – Official Record. In court proceedings where electronic recording equipment is available, the official record of court proceedings shall consist of two electronic recordings, recorded simultaneously, of the proceedings. Upon the filing of a notice of appeal, one of the two electronic recordings, or a court-certified copy of a portion thereof, of the court proceeding being appealed shall be filed and certified by the clerk as part of the record on appeal. The second electronic recording shall be retained by the clerk of the trial court.

2.03. Method of Identification.

(a) Official Recording. For identification purposes, the clerk shall designate on each of the two official electronic recordings:

(1) on the first line, the judicial district number, the name of the court, including the division in which the proceeding is being held, the sequential number of the recording (counting all recordings made in that court since the start of the current calendar year), either the letter “A” (for the recording being retained by the court) or the letter “B” (for the recording being filed as part of the record on appeal);

(2) on the second line, the caption and case file number of the proceeding recorded on the recording (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 involving more than one defendant); and

(3) on the third line, the date on which the recording was recorded in the form: MM/DD/YY.

(b) Certified Copy of Partial Official Recording. If a court-certified copy of a portion of any recording is prepared for filing as a part of the record on appeal, the clerk shall designate on the partial recording:

(1) on the first line, the judicial district number, the name of the court, including the division in which the proceeding is being held, and the word “copy”;

(2) on the second line, the caption of the case being appealed, the case file number, and the number of the source recording from which the copy was made; and

(3) on the third line, the date on which the source recording was recorded.

2.04. Duplicate Copies of Electronic Recordings.

(a) Simultaneous Duplicate Copies. A party to any court proceeding may order, in advance, a simultaneously made duplicate of the electronic recording being made of the proceeding. The cost of a simultaneous duplicate recording shall be \$50.00 per disc (or other media format) and shall be payable to either the clerk of the court or the trial court administrator, as established by local rule, at the time the order is placed.

(b) Subsequent Duplicate Copies. A party to any court proceeding may order, subsequent to the time a proceeding was recorded, a duplicate copy of the electronic recording for use in preparing an appeal or in preparing for subsequent proceedings. Upon any order for a subsequent duplicate recording, the court shall arrange for the recording of the duplicate(s). The cost of a subsequently ordered duplicate recording shall be \$100.00 per disc (or other media format) and shall be payable to either the clerk of the court or the trial court administrator, as established by local rule, at the time the order is placed.

(c) Copies for Indigent Parties. In cases involving a party declared to be indigent by the court, the Administrative Office of the Courts, upon request by the trial court, will furnish the trial court with the blank electronic media needed for

making any duplicate copy ordered by the indigent party, and no fee will be assessed by the trial court to the indigent party or to the Administrative Office of the Courts.

(d) Use of Duplication Fees. Revenue derived from the sale of duplicate copies of recordings shall first be applied to the costs incurred by the court in making the duplicate copies, and any remaining revenue may be used to fund the court's other technology related needs.

2.05. Exhibit List and Trial Log. The trial judge or the judge's designee shall keep a written exhibit list and a log listing the admission of each exhibit and the beginning and end of each witness's testimony by reference to the recording. The automatic logs of all recorded proceedings are to be maintained by the court clerk in an appropriate repository.

2.06. Depositions. In a court proceeding in which electronic recording 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 electronic recording of the deposition.

Section 3. Procedure on Filing Notice of Appeal

3.01. Trial Proceedings. Upon the filing of a Notice of Appeal in any case in which the trial proceedings have been electronically recorded, the clerk of the court shall, within thirty days of the filing of the Notice of Appeal, file the electronic recording or recordings of the entire trial proceeding, unless otherwise agreed by the parties.

3.02. Pre-Trial and Post-Trial Proceedings. Within fifteen days after filing the Notice of Appeal, the appellant shall file a designation of any pre-trial or post-trial proceedings to be included in the trial record. The appellee shall have an additional fifteen days to file a designation of any additional proceedings to be included. If any proceeding listed in any designation so filed was not electronically recorded, such designation shall be clearly marked "WRITTEN TRANSCRIPT REQUIRED."

3.03. Clerk's Preparation of Record. Where the pre-trial or post-trial proceedings listed in any designation so filed were recorded, the clerk of the court shall, within thirty days from the date the designation is filed, file the electronic recording of the designated proceedings or a certified copy thereof. Once all electronic recordings and written transcripts making up the record on appeal have been assembled, each recording and, if applicable, transcript shall 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.

Section 4. Procedure on Appeal

4.01. References to Electronic 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 an electronic recording shall be to volume number, month, day, year, hour, minute and second at which the reference begins as recorded on the recording. (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.

4.02. Optional Appendix to Briefs. Rule 28, Tennessee Rules of Appellate Procedure, allows the optional filing of an appendix to a party’s appellate brief. Thus, in any case in which the trial court proceeding was electronically recorded pursuant to this Rule 26, a party may include in an appendix a transcript of the evidence or any portion thereof. 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 cross-reference to the electronic recording which corresponds to that point of the transcription. (See the example set out in Section 4.01 for the format of such cross-references.)

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

Section 5. Establishment of Local Procedures

5.01. The judges of a judicial district in which electronic recording equipment is used to record court proceedings may, by order, establish further procedures relating to the recording of court proceedings, provided that such procedures do not conflict with the provisions of this rule, with any other rule adopted by the Supreme Court of Tennessee, or with any statute, and further provided that such procedures are approved by the Supreme Court prior to implementation.

[end of Appendix]