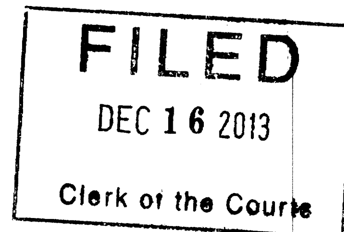
IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF CRIMINAL PROCEDURE



No. ADM2013-02056

ORDER

The Court adopts the attached amendments effective July 1, 2014, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 15 DEPOSITIONS
RULE 42 CRIMINAL CONTEMPT.

The text of each amendment is set out in the attached Appendix.

IT IS SO ORDERED.

FOR THE COURT:

GARY R. WADE, CHIEF JUSTICE

APPENDIX

2014 AMENDMENTS TO THE TENNESSEE RULES OF CRIMINAL PROCEDURE

In the attached amended rules, ~~overstriking~~ indicates deleted text and underlining indicates added text.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 15

DEPOSITIONS

[Amend Tenn. R. Crim. P. 15(a)(1) ("When Taken: In General") by adding the new second and third sentences indicated below by underlining:]

(1) *In General.* -- A party may move that a prospective witness be deposed in order to preserve testimony for trial. Any such motion may be filed at any time after the defendant's initial appearance before a magistrate and after the defendant has been afforded counsel. Such motion shall be filed in a court of record. The Court may: . . . .

Advisory Commission Comment [2014]

Rule 15(a)(1) was amended by adding the second and third sentences, which provide that a motion to take the deposition of a prospective witness may be filed at any time after a defendant's initial appearance before a magistrate as required by Tenn. R. Crim. P. 5(a)(1) and that such motion shall be filed in a court of record. The amendment did not affect any other provision of Tenn. R. Crim. P. 15 and in no way altered the requirement that depositions taken pursuant to this rule are for the preservation of testimony for use at trial and not for discovery. The amendment's requirement that a motion for a deposition be filed in a "court of record" signifies that such motions are not within the jurisdiction of the general sessions court under Tenn. R. Crim. P. 1(b).

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 42

CRIMINAL CONTEMPT

[Amend Rule 42(b) as indicated below:]

(a) SUMMARY DISPOSITION. – A judge may summarily punish a person who commits criminal contempt in the judge's presence if the judge certifies that he or she saw or heard the conduct constituting the contempt. The contempt order shall recite the facts, be signed by the judge, and entered in the record.

(b) DISPOSITION ON NOTICE AND HEARING. – A criminal contempt shall be initiated ~~prosecuted~~ on notice, except as provided in subdivision (a) of this rule.

(1) CONTENT OF NOTICE. – The criminal contempt notice shall:

(A) state the time and place of the hearing;

(B) allow the alleged contemner ~~defendant~~ a reasonable time to prepare a defense; and

(C) state the essential facts constituting the criminal contempt charged and describe it as such.

(2) FORM OF NOTICE. – The judge shall give the notice orally in open court in the presence of the alleged contemner ~~defendant~~ or by written order, including an arrest order if warranted.~~;~~ The notice and order may also issue on application of the district attorney general, ~~or of~~ an attorney appointed by the court for that purpose, or an attorney representing a party in the case ~~by a show cause or arrest order~~.

(3) RELEASE ON BAIL. – The alleged contemner ~~criminal contempt defendant~~ is entitled to admission to bail as provided in these rules.

(4) DISQUALIFICATION OF JUDGE. – When the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the hearing, except with the alleged contemner's ~~defendant's~~ consent.

(5) PUNISHMENT ORDER. – If the court finds the alleged contemner to be in ~~defendant guilty of~~ contempt, the court shall enter an order setting the punishment.

Advisory Commission Comment [2014]

The reference in Rule 42(b)(2) to "a show cause order" was deleted. The burden of proof in a criminal contempt proceeding governed by subdivision (b) of the rule is on the district attorney or other attorney prosecuting the allegation of criminal contempt, and requiring an alleged contemner to "show cause" why he or she should not be held in contempt impermissibly placed the burden of proof on the alleged contemner.

Subdivision (b)(2) also was amended to add "an attorney representing a party in the case" in order to conform the rule to current practice. This rule also guides criminal contempt proceedings

arising in civil cases that involve attorneys for the parties. *See, e.g., Wilson v. Wilson*, 984 S.W.2d 898 (Tenn. 1998).

Subdivision (b) also was amended to use the term "alleged contemner" throughout the subdivision, instead of only the word "defendant," to prevent confusion by distinguishing the person charged with criminal contempt from a named defendant in a particular case. A party charged with criminal contempt may or may not be a named defendant in the particular case. The new term conforms the language of the rule to the terminology in *Baker v. State*, ___ S.W.3d ___, ___, 2013 WL 4768309, at *6-7 (Tenn. 2013).