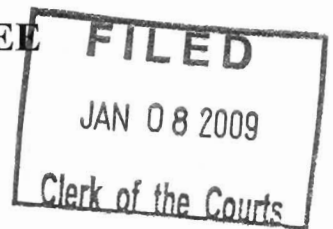


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE




IN RE: AMENDMENTS TO TENNESSEE
 RULES OF CRIMINAL PROCEDURE

ORDER

The Court adopts the attached amendments effective July 1, 2009, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 5	INITIAL APPEARANCE BEFORE MAGISTRATE
RULE 17	SUBPOENA
RULE 24	TRIAL JURORS
RULE 52	HARMLESS ERROR AND PLAIN ERROR.

FOR THE COURT:



JANICE M. HOLDER
CHIEF JUSTICE

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 5

INITIAL APPEARANCE BEFORE MAGISTRATE

[Amend 5(e) to read as follows:]

(e) **Indictment Before Preliminary Examination.**—Any defendant arrested prior to indictment or presentment for a misdemeanor or felony, except small offenses, is entitled to a preliminary hearing on request, whether or not the grand jury is in session. If the defendant is indicted or charged by presentment while the preliminary hearing is being continued (whether at the defendant's or the prosecutor's request) or at any time before he or she has been afforded a preliminary hearing on a warrant, the defendant may dismiss the indictment or presentment on motion filed not more than thirty days from the arraignment on the indictment or presentment. The dismissal shall be without prejudice to a subsequent indictment or presentment.

2009 Advisory Commission Comment

The former rule prohibited the government from indicting a defendant while a preliminary hearing was pending. To preserve the right of a preliminary hearing in all instances the rule has been amended to include presentments. The remedy of the dismissal without prejudice is to afford the defendant the right to a preliminary hearing. Finally, to have a uniform time for filing a motion to dismiss, the rule requires that the motion be filed no more than thirty days from the arraignment.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 17

SUBPOENA

[Delete the third sentence of the Advisory Commission Comment.]

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 24

TRIAL JURORS

(e) Number of Peremptory Challenges.—

* * * *

[Amend 24(e)(4) to read as follows:]

(4) Additional Jurors.—For each additional juror selected pursuant to Rule 24(f), each side is entitled to one peremptory challenge for each defendant. Such additional peremptory challenges may be used against any regular or additional juror.

2009 Advisory Commission Comment

Rule 24(e)(4) is amended to refer to “Rule 24(f),” correcting an erroneous reference to “23(f).”

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 52

HARMLESS ERROR AND PLAIN ERROR

[delete the current rule in its entirety, including its title, and add the following new title:]

[RESERVED.]

2009 Advisory Commission Comment

The text of Rule 52 (“Harmless Error and Plain Error”) is deleted because harmless error and plain error are covered in amended Tennessee Rule of Appellate Procedure 36(b).