

FILED

OCT 27 2020

Clerk of the Appellate Courts
Rec'd By _____

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: AMENDMENTS TO TENNESSEE RULES OF APPELLATE PROCEDURE AND
CIVIL PROCEDURE**

No. ADM2020-01016 – Filed: August 28, 2020

RESPONSE TO INVITATION FOR PUBLIC COMMENT

In response to the proposed amendment to Rule 9 of the Tennessee Rules of Appellate Procedure, the Executive Committee of the Tennessee District Public Defenders Conference (“Conference”), expresses its tentative support for the proposed amendment. In general, the Conference agrees that the appellate courts will be better equipped to address interlocutory appeals when the trial courts and parties clarify the basis and scope of the issues they wish to have reviewed under Rule 9. In that sense, the proposed amendment reflects what the Conference believes to be the best practice. Nevertheless, the Conference is concerned that the proposed rule, if adopted without further qualification, may deprive certain litigants of interlocutory review.

**I. THE PROPOSED RULE PLACES THE ENTIRE REponsIBILITY OF SPECIFYING
THE ISSUE FOR REVIEW ON THE TRIAL COURT**

The primary concern of the Conference is that the proposed Rule places the entire responsibility of specifying the issue or issues for review on the trial court. This has a few potential problems. First, it deprives the party seeking review of the opportunity to define the issue for itself. Under the current Rule, the party seeking review is able, via its applications in both the trial court and the appellate court, to define the precise question it would like the appellate court to consider. But under the proposed Rule, the trial court would effectively take over this

responsibility. Though many trial courts will likely handle this task appropriately, the Conference is concerned that some trial courts may, perhaps unintentionally, incorrectly identify or define the issue being certified for appellate review. And if that happens, the party seeking review may be deprived, through no fault of its own, of an otherwise appropriate interlocutory appeal.

Second, the proposed rule raises the concern that, at least in the criminal context, the appellate court will treat the requirement of issue certification much as it does certified questions under Rule 37 of the Tennessee Rule of Criminal Procedure. Under current law, appellants seeking review of a certified question as part of a guilty plea must painstakingly craft the question in a manner that satisfies the requirements set out in *State v. Preston*, 759 S.W.2d 647 (Tenn. 1988). The Court of Criminal Appeals has observed that these requirements have “become more of a trap than serving its intended purpose.” *State v. Ogle*, 2001 WL 38755 (Tenn. Crim. App. Jan. 17, 2001).

The Conference is concerned that, if adopted, the new Rule may become a similar “trap.” Particularly if, as discussed above, the trial court is tasked with certifying the question for interlocutory review, the Conference is concerned that otherwise meritorious appeals will be rejected because the Rule 9 Order fails to specify, or appropriately define, the question presented.

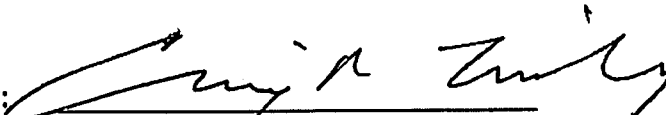
II. CONCLUSION

The Conference agrees that the interests of both the courts and the parties are best served when the issues subject to interlocutory review are made clear in the trial court before the appellate process begins. The Conference only asks that the proposed Rule be clarified to ensure that, if adopted, the new Rule does not become a “trap” that deprives its clients of appellate review. To that end, the Conference first suggests that the proposed Rule be modified to reflect that the

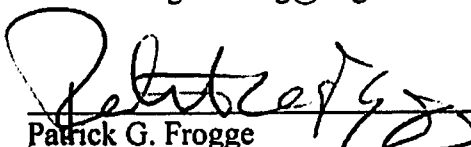
appealing party retains the ability to define the issue it wishes to have reviewed. While the trial court should certainly be permitted to express its views on the issue to be reviewed, its written order should not be treated as a limitation on the appealing party. Second, the proposed rule should be clarified to reflect that, unlike certified questions under Tenn. R. Crim. P. 37, questions certified for review under Rule 9 should be read broadly to facilitate review.

Respectfully submitted,

Tennessee District Public Defenders Conference

By: 

Craig Fickling
Tenn. B.P.R. #014845
President
618 Church Street, Suite 300
Nashville, TN, 37219
Phone: 615-741-5562
Fax: 615-741-5568
Email: craig.fickling@tn.gov

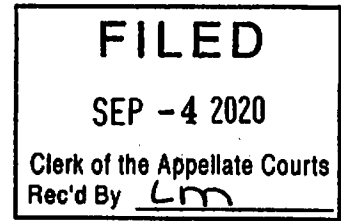
By: 

Patrick G. Frogge
Tenn. B.P.R. #020763
Executive Director
618 Church Street, Suite 300
Nashville, TN, 37219
Phone: 615-741-5562
Fax: 615-741-5568
Email: patrick.frogge@tn.gov

Kim Meador - Amend Rule 11.01(a) T.R.C.P.

ADM2020-61016

From: Deborah Rubenstein
To: appellatecourtclerk
Date: 9/4/2020 8:23 AM
Subject: Amend Rule 11.01(a) T.R.C.P.



A comment to the proposed amendment to T.R.C.P. 11.01(a):

The words "if any" should not be stricken. The sentence also refers to a "party," who would not have a BPR number, if *pro se*.

Thank you for your consideration.

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Debbie Rubenstein, PLS/CLP
Certified Legal Professional
Judicial Assistant
Circuit Court Judge Michael W. Binkley, Division III
State of Tennessee, 21st Judicial District
135 Fourth Avenue South, Ste 286
Franklin, TN 37064
Direct: 615.599.4014
Office: 615.425.4009
Fax: 615.790.5047

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