

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

08/28/2020

Clerk of the
Appellate Courts

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

No. ADM2020-01016

ORDER

The Advisory Commission on the Rules of Practice & Procedure annually presents recommendations to the Court to amend the Tennessee Rules of Appellate, Civil, Criminal, and Juvenile Procedure and the Tennessee Rules of Evidence. With its meeting on July 17, 2020, the Advisory Commission completed its 2019-2020 term, and the Commission thereafter transmitted its recommendations to the Court.

The Court hereby solicits written comments from the bench, the bar, and the public concerning the Advisory Commission's recommended amendments set out in Appendix I (proposed amendments to the Rules of Appellate Procedure and Civil Procedure) to this order. The deadline for submitting written comments is November 30, 2020. Written comments may either be submitted by email to appellatecourtclerk@tncourts.gov or by mail addressed to:

James Hivner, Clerk
Re: 2021 Rules Package
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

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

PER CURIAM

APPENDIX I

PROPOSED AMENDMENTS TO THE TENNESSEE

RULES OF APPELLATE PROCEDURE

and

RULES OF CIVIL PROCEDURE

(new text indicated by underlining; deleted text indicated by overstriking)

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 3

APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION

[Amend Rule 3(b) and 3(c), as indicated below:]

...

(b) Availability of Appeal as of Right by Defendant in Criminal Actions. In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation; an order denying a motion for reduction of sentence pursuant to Rule 35(d), Tennessee Rules of Criminal Procedure; an order or judgment pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure; from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding; from a final order on a request for expunction; and from the denial of a motion to withdraw a guilty plea under Rule 32(f), Tennessee Rules of Criminal Procedure 32(f).

(c) Availability of Appeal as of Right by the State in Criminal Actions. In criminal actions an

appeal as of right by the state lies only from an order or judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) the substantive effect of which results in dismissing an indictment, information, or complaint; (2) setting aside a verdict of guilty and entering a judgment of acquittal; (3) arresting judgment; (4) granting or refusing to revoke probation; or (5) remanding a child to the juvenile court. The state may also appeal as of right from a final judgment in a habeas corpus, extradition, or post-conviction proceeding; from the modification of a sentence pursuant to Rule 35(d), Tennessee Rules of Criminal procedure; from an order or judgment pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure; and from a final order on a request for expunction.

Advisory Commission Comment [2021]

Rule 35(d), Tennessee Rules of Criminal Procedure provides that a defendant may appeal the denial of a motion for reduction of sentence and that the State may appeal from a modification of a sentence. The 2021 amendment adds to the list of available appeals in subsection (b) a motion for reduction of sentence and in subsection (c) from a modification of a sentence.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 9

INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT

[Amend Rule 9(b) as indicated below:]

...

(b) Procedure in the Trial Court. The party seeking an appeal must file and serve a motion requesting such relief within 30 days after the date of entry of the order appealed from. When the trial court is of the opinion that an order, not appealable as of right, is nonetheless appealable, the trial court shall state in writing the specific issue or issues the court is certifying for appeal and the reasons for its opinion. The trial court's statement of reasons shall specify: (1) the legal criteria making the order appealable, as provided in subdivision (a) of this rule; (2) the factors leading the trial court to the opinion those criteria are satisfied; and (3) any other factors leading the trial court to exercise its discretion in favor of permitting an appeal. The appellate court may ~~thereupon~~ in its discretion allow an appeal from the order.

Advisory Commission Comment [2021]

Rule 9(b) is amended to add a requirement that a trial court's order certifying as appealable an interlocutory order of the court shall state the specific issue or issues for consideration by the appellate court. The word "thereupon" is deleted from the last sentence of the Rule as surplusage.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 20

FILING AND SERVICE OF PAPERS

[Amend Rule 20(a) as indicated below:]

(a) Filing. Papers required or permitted to be filed in the appellate court shall be filed with the clerk. Filing shall not be timely unless the papers are received by the clerk within the time fixed for filing or mailed to the office of the clerk by certified return receipt mail or registered return receipt mail within the time fixed for filing. Filing will also be timely if placed ~~with a commercial delivery service, having computer tracking capacity,~~ for delivery with computer tracking, either through a commercial delivery service or the United States Postal Service, within the time fixed for filing.

Official drop boxes for filing of papers shall be located at the Supreme Court Buildings in Knoxville, Nashville, and Jackson and shall be maintained by agents of the Clerk of the Appellate Courts. These boxes shall be opened at the beginning of each business day. Papers found therein will be deemed filed on the last business day preceding opening of the box.

Advisory Commission Comment [2021]

Subdivision (a) is amended to clarify that, as with commercial delivery services, filing is timely if placed for delivery with computer tracking with the United States Postal Service within the time fixed for filing.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 11.01

SIGNATURE

[Amend Rule 11.01(a), as indicated below:]

(a) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, e-mail address, and Tennessee Board of Professional Responsibility number, ~~if any~~. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Advisory Commission Comment [2021]

Rule 11.01(a) is amended to require that every pleading, written motion, and other paper shall include the signer's email address. Providing an e-mail address is useful but does not of itself signify consent to filing or service by e-mail.