



November 9, 2018

James Hivner, Clerk of Appellate Courts
Tennessee Supreme Court
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

FILED
NOV - 9 2018
Clerk of the Appellate Courts
Rec'd By LM

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Re: Amendments to the Tenn. R. Crim. P. 43 - No. ADM2018-01575

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") has carefully considered the proposed changes to Rule 43 of the Rules of Criminal Procedure.

The Knoxville Bar Association understands the intent of the proposed amendment to Tenn. R. Crim. P. 43 is to allow for decisions about release from pretrial incarceration following arrest to be made promptly, at any time of day or night, via initial appearance using audio-visual devices, irrespective of whether the defendant or judge or magistrate are present in a courtroom or a courtroom is open to the public at the time of the initial appearance. The proposed amendment raises concerns about the guarantees to public proceedings and open courts in criminal cases. Despite these concerns, however, and given the intent of the rule change, the Knoxville Bar Association supports amending the rule to allow greater flexibility for how initial appearances in criminal proceedings are held.

The Knoxville Bar Association respectfully suggests that the language of the amendment is unclear, however, and proposes the following revised language instead (underlined):

TENNESSEE RULES OF CRIMINAL PROCEDURE
RULE 43
PRESENCE OF THE DEFENDANT.

(e) Initial Appearance – Audio-Visual Devices.

(2) the judge or magistrate and the defendant are able to view and communicate with each other simultaneously and such communication is accessible to the public.

As always, the KBA appreciates the opportunity to comment on proposed Rules and changes to such Rules promulgated by the Tennessee Supreme Court.

Sincerely,

Keith H. Burroughs, President
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cc: Marsha Watson, KBA Executive Director (via e-mail)
KBA Executive Committee (via e-mail)

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appellatecourtclerk - On Behalf of the Knoxville Bar Association - Comment regarding Proposed Amendments to the Tennessee Rules Of Procedure & Evidence; No. ADM2018-01575

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Attachments: KBA Comment on No. ADM2018-01575.110918.pdf



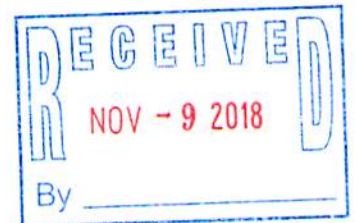
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Good afternoon.

On behalf of the Knoxville Bar Association, I have attached a Comment regarding the proposed Amendments to the Tennessee Rules Of Procedure & Evidence; No. ADM2018-01575. The KBA appreciates the extension granted by the Supreme Court.

If you have any questions, please let me know.

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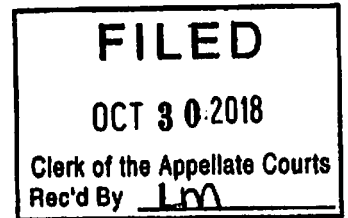


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IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: AMENDMENTS TO
TENNESSEE RULES OF
PROCEDURE & EVIDENCE

)
)
)
)

No. ADM2018-01575

COMMENT OF THE TENNESSEE BAR ASSOCIATION

The Tennessee Bar Association (“TBA”) makes the following comment regarding the proposed amendments to the Rules of Procedure & Evidence filed August 30, 2018:

BACKGROUND

On August 30, 2018, this Court issued an Order soliciting comments on various amendments proposed by the Advisory Commission on Rules of Evidence and Rules of Practice and Procedure. The Tennessee Bar Association asked its Criminal Justice Section, Business Law Section, Creditors Practice Section, Family Law Section, General, Solo & Small Firm Practitioners Section, Juvenile & Children’s Law Section, Litigation Section, Real Estate Law Section, Construction Law Section, Tort and Insurance Practice Section, Appellate Practice Section, Bankruptcy Law Section, and Labor & Employment Law Section to review the proposed rules and provide any comments or recommendations. Based upon that review, the TBA recommends the adoption of the rules without change except as to the following identified rules.

**THE PROPOSED CHANGES TO RULES 4.04 AND 4.05
OF THE TENNESSEE RULES OF CIVIL PROCEDURE
SHOULD BE ADOPTED WITH REVISIONS**

The TBA is in favor of adoption of the proposed amendments to Rules 4.04 and 4.05 of the Tennessee Rules of Civil Procedure but suggest one change. Both Rules 4.04 and 4.05 refer in separate subsections to service of process on corporations and partnerships/unincorporated associations, including Limited Liability Companies (“LLC’s”). However, the proposed edits that clarify the rules, regarding what constitutes a default judgment when there is service by mail, only apply to foreign and domestic corporations. Given the new requirement that evidence from the Secretary of State’s office regarding the entity’s address accompany the Motion for Default Judgment, the TBA feels that it is more appropriate for the proposed requirement to apply to all business entities filed with the Secretary of State’s office, including, but not limited to, corporations, limited liability companies, limited liability partnerships, and limited partnerships.


RESPECTFULLY SUBMITTED,


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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "A" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.


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