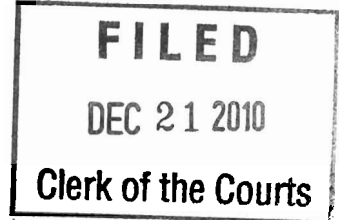


**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**



**IN RE:        AMENDMENTS TO TENNESSEE  
              RULES OF CRIMINAL PROCEDURE**

**ORDER**

The Court adopts the attached amendments effective July 1, 2011, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 4	ARREST WARRANT OR SUMMONS ON A COMPLAINT
RULE 11	PLEAS
RULE 37	APPEAL
RULE 45	COMPUTING AND EXTENDING TIME.

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

IT IS SO ORDERED.

FOR THE COURT:

*Cornelia A. Clark*  
\_\_\_\_\_  
CORNELIA A. CLARK, CHIEF JUSTICE

*APPENDIX*

**2011 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 4

ARREST WARRANT OR SUMMONS ON A COMPLAINT

[Add the following new Advisory Commission Comment; the text of the rule is unchanged.]

\* \* \* \*

2011 Advisory Commission Comment

Rule 4(a)(3) requires the general sessions court clerk to “promptly record in a *docket book* the issuance of every warrant and summons in the county.” (Emphasis added.) The words “docket book” must be interpreted in light of Tenn. Code Ann. § 10-7-121(a)(1), which provides (in pertinent part): “Notwithstanding any other provision of law to the contrary, any information required to be kept as a record by any government official may be maintained on a computer or removable computer storage media. . .instead of bound books or paper records,” if four standards listed in the statute are met.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 11

PLEAS

[Amend Rule 11(b) as set out below:]

(a) \* \* \* \*

(b) Considering and Accepting a Guilty or Nolo Contendere Plea. —

(1) Advising and Questioning the Defendant. — Before accepting a guilty or nolo contendere plea, the court shall address the defendant personally in open court and inform the defendant of, and determine that he or she understands, the following:

(A) The nature of the charge to which the plea is offered;

(B) the maximum possible penalty and any mandatory minimum penalty;

(C) if the defendant is not represented by an attorney, the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and every other stage of the proceeding;

(D) the right to plead not guilty or, having already so pleaded, to persist in that plea;

(E) the right to a jury trial;

(F) the right to confront and cross-examine adverse witnesses;

(G) the right to be protected from compelled self incrimination;

(H) if the defendant pleads guilty or nolo contendere, the defendant waives the right to a trial and there will not be a further trial of any kind except as to sentence; ~~and~~

(I) if the defendant pleads guilty or nolo contendere, the court may ask the defendant questions about the offence to which he or she has pleaded. If the defendant answers these questions under oath, on the record, and in the presence of counsel, the answers may later be used against the defendant in a prosecution for perjury or aggravated perjury; and

(J) if the defendant pleads guilty or nolo contendere, it may have an effect upon the defendant's immigration or naturalization status, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequences of a plea.

(c) \* \* \* \*

#### 2011 Advisory Commission Comment

Subsection (b)(1)(J) was added to address the United States Supreme Court's holding in *Padilla v. Kentucky*, \_\_\_ U.S. \_\_\_ (2010).

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 37

APPEAL

[Amend Rule 37(b) as indicated below:]

**Rule 37. Appeal.** – (a) \* \* \* \*

(b) When an Appeal Lies. – The defendant or the state may appeal any order or judgment in a criminal proceeding when the law provides for such appeal. The defendant may appeal from any judgment of conviction:

(1) on a plea of not guilty; or

(2) on a plea of guilty or nolo contendere, if:

(A) the defendant entered into a plea agreement under Rule 11(a)(3) but explicitly reserved—with the consent of the state and of the court—the right to appeal a certified question of law that is dispositive of the case, and the following requirements are met:

(i) the judgment of conviction or ~~other document to which such judgment refers~~ order reserving the certified question that is filed before the notice of appeal is filed; contains a statement of the certified question of law that the defendant reserved for appellate review;

(ii) the question of law ~~is~~ as stated in the judgment or ~~document~~ order reserving the certified question ~~so as to identify~~ identifies clearly the scope and limits of the legal issue reserved;

(iii) the judgment or ~~document~~ order reserving the certified question reflects that the certified question was expressly reserved with the consent of the state and the trial court; and

(iv) the judgment or ~~document~~ order reserving the certified question reflects that the defendant, the state, and the trial court are of the opinion that the certified question is dispositive of the case; or

(B) the defendant seeks review of the sentence and there was no plea agreement under Rule 11(c); or

(C) the errors complained of were not waived as a matter of law by the guilty or nolo contendere plea, or otherwise waived, and if such errors are apparent from the record of the earlier proceedings; or

(D) the defendant—with the consent of the court—explicitly reserved the right to appeal a certified question of law that is dispositive of the case, and the requirements of Rule 37(b)(2) are met, except the judgment or ~~document~~ order reserving the certified question need not reflect the state's consent to the appeal or the state's opinion that the question is dispositive.

(c) \* \* \* \*

#### 2011 Advisory Commission Comment

The amendment to Rule 37(b)(2)(A) addresses those cases where the certified question of law is not stated in the judgment. In such cases, the amendment removes the requirement that a separate document setting forth the certified question of law be incorporated by reference in the judgment, and it allows the requirements of the Rule to be met by an order entered by the trial court certifying the question.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 45

COMPUTING AND EXTENDING TIME

[Amend Rule 45(a) as indicated:]

(a) Computing Time. – The following rules apply in computing any period of time specified in these rules or in any court order:

(1) Day of Act or Event Excluded. Exclude the day of the act or event from which the designated period of time begins to run.

(2) Last Day of Period included. Include the last day of the period unless it is:

(A) a Saturday, Sunday, or legal holiday; or

(B) when the act to be done is the filing of a paper in court, a day on which the office of the court clerk is closed or on which weather or other conditions have made the clerk's office inaccessible.

When the last day is so excluded, the period runs until the end of the next day that is not one of the aforementioned days.

(3) Exclusion from Periods of Less Than Seven Days. Exclude intermediate Saturdays, Sundays, and legal holidays when the period of time is less than 7 days.

(4) Definition of Legal Holiday. ~~“Legal holiday” includes any national holiday or holiday designated by the state of Tennessee.~~ “Legal holiday” means any holiday listed in Tenn. Code Ann. § 15-1-101.

(b) \* \* \* \*



## 2011 Advisory Commission Comment

Rule 45(a)(4) is amended to define “legal holiday” by reference to statute, Tenn. Code Ann. § 15-1-101. The status of a day as a legal holiday is statutory; thus, for the purpose of filing papers in court, it does not depend on whether the clerk’s office is open for business. For example, state offices might be open on Columbus Day, pursuant to the governor’s authority under Tenn. Code Ann. § 4-4-105(a)(3) to substitute the day after Thanksgiving for the Columbus Day holiday; in such circumstances, however, Columbus Day is still a “legal holiday” for purposes of computing time periods under the rule.

Rule 45(a)(2)(B) also is amended to add a reference to days on which the office of the court clerk is closed.