IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
DEC 18 2012
Clerk of the Courts

IN RE: AMENDMENTS TO TENNESSEE RULES OF APPELLATE PROCEDURE

No. M2012-01977-SC-RL2-RL

ORDER

The Court adopts the attached amendments effective July 1, 2013, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 3	APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION;
RULE 4	APPEAL AS OF RIGHT: TIME FOR FILING NOTICE OF APPEAL;
RULE 6	SECURITY FOR COSTS ON APPEAL;
RULE 11	APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT;
RULE 18	APPEALS BY POOR PERSONS;
RULE 30	FORM OF BRIEFS AND OTHER PAPERS.

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

IT IS SO ORDERED.

FOR THE COURT:

GARY R. WADE, CHIEF JUSTICE

APPENDIX

2013 AMENDMENTS TO THE TENNESSEE RULES OF APPELLATE PROCEDURE

In the attached amended rules, ~~overstriking~~ indicates deleted text and <u>underlining</u> indicates added text.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 3

APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION

[Amend Rule 3(b) and (c) by adding the underlined text and deleting the overstricken text below; paragraphs (a) and (d) - (g) are unchanged:]

(a) * * * *

(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 or judgment entered pursuant to Rule 36 <u>or Rule 36.1</u>, Tennessee Rules of Criminal Procedure, ~~and~~ from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding<u>, and from a final order denying a request for expunction</u>.

(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, ~~or~~ from an order or judgment entered pursuant to Rule 36 <u>or Rule 36.1</u>, Tennessee Rules of Criminal Procedure<u>, and from a final order denying a request for expunction.</u>.

(d) * * * *

Advisory Commission Comment [2013]

Tenn. R. Crim. P. 36.1 was adopted in 2013 to provide a mechanism for the defendant or the State to seek to correct an illegal sentence. With the adoption of that rule, this rule (Tenn. R. App. P. 3) was amended to provide for an appeal as of right, by either the defendant (see paragraph 3(b)) or the State (see paragraph 3(c)), from the trial court's ruling on a motion filed under Tenn. R. Crim. P. 36.1 to correct an illegal sentence.

Paragraphs (b) and (c) also were amended to permit appeals as a matter of right for the defendant and the State in expunction requests. The amendments were designed to address the decision in *State v. Adler*, 92 S.W.3d 397 (Tenn. 2002), which held that rulings on expunction requests could only be appealed by use of the writ of certiorari, pursuant to Tenn. Code Ann. § 27-8-101 (2000). Since these matters can be appealed, they now are included under Tenn. R. App. P. 3 as a matter that can be appealed as of right.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 4

APPEAL AS OF RIGHT: TIME FOR FILING NOTICE OF APPEAL

[Amend Tenn. R. App. P. 4(e) by adding the underlined text below:]

(a) Generally. — * * * *

(e) Effect of Specified Timely Motions on Trial Court's Jurisdiction. — The trial court retains jurisdiction over the case pending the court's ruling on any timely filed motion specified in subparagraph (b) or (c) of this rule. <u>If a motion specified in either subparagraph (b) or (c) is filed within the time permitted by the applicable rule referred to in that subparagraph, the filing of a notice of appeal prior to the filing of the motion does not deprive the trial court of jurisdiction to rule upon the motion.</u> A notice of appeal filed prior to the trial court's ruling on a timely specified motion shall be deemed to be premature and shall be treated as filed after the entry of the order disposing of the motion and on the day thereof. If an appellant named in a premature notice of appeal decides to terminate the appeal as a result of the trial court's disposition of a motion listed in subparagraph (b) or (c) of this rule, the appellant shall file in the appellate court a motion to dismiss the appeal pursuant to Rule 15.

Advisory Commission Comment [2013]

Subparagraph (e) of the rule is amended to clarify that a trial court does not lose jurisdiction to rule upon a motion referred to in subparagraph (b) or (c) if the motion was filed within the time permitted by the applicable rule. A notice of appeal filed prior to the timely filing of one of the listed

motions, or prior to the court's ruling on the motion, is deemed to be premature and does not deprive the court of jurisdiction to rule upon the motion.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 6

SECURITY FOR COSTS ON APPEAL

[Amend Tenn. R. App. P. 6(b) by adding the underlined text and deleting the overstricken text below:]

(a) * * * *

(b) Unless an appellant is exempted by statute or has filed an affidavit of indigency and been permitted to proceed on appeal as ~~a poor~~ <u>an indigent</u> person, the appellant shall pay to the clerk of the appellate court all applicable litigation taxes upon receipt of the notice of docketing of the appeal pursuant to Rule 5(c). If the appellant fails to pay the litigation tax, the appellate court may issue an order requiring the appellant to show cause why the appeal should not be dismissed for failure to pay the litigation tax.

(c) * * * *.

Advisory Commission Comment [2013]

Paragraph (b) of the rule was amended to replace the term "poor person" with the term "indigent person." The amendment was not intended to change the meaning or application of the rule.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 11

APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT

[Amend Tenn. R. App. P. 11(b), (d), and (f) by adding the underlined text and deleting the overstricken text below:]

(a) Application for Permission to Appeal; Grounds. — An appeal by permission may be taken from a final decision of the Court of Appeals or Court of Criminal Appeals to the Supreme Court only on application and in the discretion of the Supreme Court. In determining whether to grant permission to appeal, the following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons that will be considered: (1) the need to secure uniformity of decision, (2) the need to secure settlement of important questions of law, (3) the need to secure settlement of questions of public interest, and (4) the need for the exercise of the Supreme Court's supervisory authority.

(b) Time; Content. — The application for permission to appeal shall be filed with the clerk of the Supreme Court within 60 days after the entry of the judgment of the Court of Appeals or Court of Criminal Appeals if no timely petition for rehearing is filed, or, if a timely petition for rehearing is filed, within 60 days after the denial of the petition or entry of the judgment on rehearing. Except for an application seeking to appeal the Court of Criminal Appeals' disposition of an appeal pursuant to Rule 9 or Rule 10, the time period for filing an application for permission to appeal is not jurisdictional in a case arising from the Court of Criminal Appeals and may be waived by the

Supreme Court in the interest of justice. The application shall contain a statement of: (1) the date on which the judgment was entered and whether a petition for rehearing was filed, and if so, the date of the denial of the petition or the date of entry of the judgment on rehearing; (2) the questions presented for review and, for each question presented, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); (3) the facts relevant to the questions presented, but facts correctly stated in the opinion of the intermediate appellate court need not be restated in the application; and (4) the reasons, including appropriate authorities, supporting review by the Supreme Court. Except by order of the Supreme Court, the argument in an application for permission to appeal shall not exceed 50 pages. The brief of the appellant referred to in subdivision (f) of this rule may be served and filed with the application for permission to appeal. A copy of the opinion of the appellate court shall be appended to the application.

(c) Number of Copies; Service. — The original and six copies of the application shall be filed. The application shall be served on all other parties in the manner provided in Rule 20 for the service of papers.

(d) Answer; Reply. — Within 15 days after filing of the application, any other party may file an answer in opposition, with copies in the number required for the application. An answer shall set forth the reasons why the application should not be granted and any other matters considered necessary for correction of the application. Except by order of the Supreme Court, the argument in an answer in opposition shall not exceed 25 pages. The answer shall be served on all other parties

in the manner provided in Rule 20 for the filing of papers. No reply to the answer shall be filed.

(e) Action on Application. — The application shall be granted if two members of the Supreme Court are satisfied that the application should be granted. The appeal shall be docketed in accordance with Rule 5(c) upon entry of the order granting permission to appeal.

(f) Briefs. — If permission to appeal is granted, the appellant shall serve and file his or her brief within 30 days after the date on which permission to appeal was granted. If the appellant files a brief with the application for permission to appeal as provided in subdivision (b) of this rule, he or she may also file a supplemental brief, which shall likewise be served and filed within 30 days after the date on which permission to appeal was granted. Except by order of the Supreme Court~~appellate court or a judge thereof~~, the argument in a supplemental brief shall not exceed 25 pages. If available, the color of the cover of a supplemental brief shall be blue. An appellant who elects not to file a supplemental brief shall, within 30 days after the date on which permission to appeal was granted, file with the clerk of the appellate court and serve on the appellee notice of the appellant's election not to file a supplemental brief; if the appellant fails to file a notice within 30 days, the appellee's time runs from the 30th day after permission to appeal was granted.

The appellee shall serve and file a brief within 30 days after filing of the brief or supplemental brief of the appellant or appellant's notice of election not to file a supplemental brief.

Reply briefs shall be served and filed within 14 days after filing of the preceding brief.

The briefs shall conform with the requirements of Rule 27.

(g) Appeal in Criminal Actions. — Permission to appeal under this rule may be sought by the state and defendant in criminal actions.

(h) Grant of Permission; Cost Bond. — In civil cases, if application for permission to appeal is made by the appellee in the Court of Appeals and there is no appeal bond for costs with sufficient surety filed by the appealing party in the Court below, the appealing party must file an appeal bond for costs with sufficient surety in the amount of $1000. If this amount is deemed insufficient to cover the costs on appeal the Court may require an additional bond in an amount the Court deems sufficient to cover the cost of appeal. If application for permission to appeal is made by the appellant in the Court of Appeals and the appeal bond is insufficient to cover the cost of appeal, the Court may require the appealing party to file an additional bond in an amount the Court deems sufficient to cover the cost of appeal.

Advisory Commission Comment [2013]

Paragraphs (b) and (d) were amended to provide that the argument section of an application for permission to appeal cannot exceed 50 pages and that the argument section of an answer in opposition cannot exceed 25 pages, unless otherwise ordered by the Supreme Court. The third sentence of paragraph (f) was amended to replace "appellate court or a judge thereof" with "Supreme Court," thereby making that sentence consistent with the amended language in paragraphs (b) and (d).

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 18

APPEALS BY ~~POOR~~ INDIGENT PERSONS

[Amend Tenn. R. App. P. 18 by adding the underlined text and deleting the overstricken text below and by amending the title, as set out above):]

(a) Parties Previously Permitted to Proceed as ~~Poor~~ Indigent Persons in the Trial Court. — A party who has been permitted to proceed in an action in the trial court as ~~a poor~~ an indigent person (which includes a person who has been permitted to proceed there as one who is financially unable to obtain adequate defense in a criminal case) may proceed on appeal as ~~a poor~~ an indigent person unless, before or after the appeal is taken, the trial court finds the party is not entitled so to proceed, in which event the trial court shall state in writing the reasons for such finding.

(b) Leave to Proceed as ~~a Poor~~ an Indigent Person on Appeal. — Except as provided in (a), a party to an action in the trial court who desires to proceed as ~~a poor~~ an indigent person on appeal shall seek leave so to proceed in the trial court. If leave to proceed as ~~a poor~~ an indigent person is granted, the party may proceed without further application in the appellate court and without prepayment of fees or costs in either court or the giving of security therefor. If leave is denied, the trial court shall state in writing the reasons for the denial.

(c) Subsequent Proceedings on Denial of Leave to Proceed as ~~a Poor~~ an Indigent Person. — If leave to proceed as ~~a poor~~ an indigent person is denied, or the trial court finds that the party is not entitled so to proceed, the clerk of the trial court shall forthwith serve notice of such action. A

motion for leave to proceed as ~~a poor~~ an indigent person may be filed in the appellate court within 30 days after service of notice of the action of the trial court. The motion shall be accompanied by copies of the papers filed in the trial court seeking leave to proceed as ~~a poor~~ an indigent person and by a copy of the statement of reasons given by the trial court for its action.

(d) Motion in an Appellate Court for Leave to Proceed as ~~a Poor~~ an Indigent Person on Appeal. — If a party to an action on appeal is unable to bear the expenses of the appeal due to poverty, but that party has not sought leave from the trial court to proceed on appeal as ~~a poor~~ an indigent person, or that party becomes indigent during the appeal, the party may seek leave from the appellate court to proceed on appeal as ~~a poor~~ an indigent person. A motion for leave to proceed on appeal as ~~a poor~~ an indigent person filed in the appellate court shall be accompanied by a Uniform Affidavit of Indigency as set forth in Supreme Court Rule 13 (criminal cases) or by a Uniform Civil Affidavit of Indigency as set forth in Supreme Court Rule 29 (civil cases). If leave to proceed as ~~a poor~~ an indigent person is denied by an intermediate appellate court, the appellate court shall state in writing the reasons for the denial.

(e) Subsequent Proceedings on Denial by an Intermediate Appellate Court of Leave to Proceed as ~~a Poor~~ an Indigent Person on Appeal. — If leave to proceed as ~~a poor~~ an indigent person is denied by an intermediate appellate court, or an intermediate appellate court finds that the party is not entitled so to proceed, the clerk of the appellate courts shall forthwith serve notice of such action. A motion for leave to proceed as ~~a poor~~ an indigent person may thereafter be filed in the Supreme Court within 15 days after service of notice of the action of the intermediate appellate

court. The motion shall be accompanied by copies of any papers filed in the trial and appellate courts seeking leave to proceed as ~~a poor~~ an indigent person and by a copy of the statement of reasons given by the trial and intermediate appellate courts for their actions.

(f) Appointment of Counsel in Criminal Actions. — In a criminal action, on overruling a motion for a new trial or in arrest of judgment, whichever is later, the trial court shall advise the defendant and appoint counsel on appeal as provided in rule 37(c) of the Tennessee Rules of Criminal Procedure.

Advisory Commission Comment [2013]

The rule was amended to replace the term "poor" person(s) with the term "indigent" person(s). The amendment was not intended to change the meaning or application of the rule.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 30

FORM OF BRIEFS AND OTHER PAPERS

[Amend Tenn. R. App. P. 30(a) by adding the underlined text and deleting the overstricken text below:]

(a) Production Methods; Paper. — Briefs, transcripts or statements, applications, answers in opposition, petitions, motions, supporting papers, and objections should be produced on opaque, unglazed white paper by any printing, duplicating, or copying process that provides a clear black image. The use of recycled paper with the highest feasible percentage of postconsumer waste content is recommended and encouraged. Original typewritten pages may be used, but not carbon copies except on behalf of parties allowed to proceed as ~~poor~~ indigent persons. All printed matters should be on paper 61/8 by 91/4 inches in type not smaller than 11 point and type matter 41/4 by 71/4 inches. If not printed, copies should be on paper 81/2 by 11 inches, double spaced, except for quoted matter, which may be single spaced, with the text (1) when typewriter generated not smaller than standard elite type or (2) when computer generated not smaller than times new roman 12 point font and, in either event, not to exceed 61/2 by 91/2 inches on the page. Papers should be numbered on the bottom and fastened on the left.

(b) * * * *

Advisory Commission Comment [2013]

Paragraph (a) of the rule was amended to replace the term "poor persons" with the term "indigent persons." The amendment was not intended to change the meaning or application of the rule.