

IN THE COURT OF APPEALS OF TENNESSEE

FILED

06/21/2023

Clerk of the
Appellate Courts

**IN RE: ADOPTION OF NEW COURT OF APPEALS RULE REGARDING
REPRESENTATIONS TO THE COURT AND SANCTIONS**

No. ADM2023-00919

ORDER

In accordance with Rule 45 of the Tennessee Rules of Appellate Procedure, the Court hereby amends the Rules of the Court of Appeals to add Rule 17 as set out in the appendix to this order. This amendment shall be effective immediately. The Clerk shall provide a copy of this Order to LexisNexis and to Thomson Reuters. In addition, this Order shall be posted on the Tennessee State Courts website.

PER CURIAM

APPENDIX

Tenn. Ct. App. R. 17

COURT OF APPEALS RULE 17

RULE 17. SIGNING OF NOTICES OF APPEAL, APPLICATIONS FOR PERMISSION TO APPEAL, APPLICATIONS FOR EXTRAORDINARY APPEAL, PETITIONS FOR RECUSAL APPEAL, BRIEFS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

Rule 17.01. Representations to Court

By presenting to the court (whether by signing, filing, submitting, or later advocating) a notice of appeal, application for permission to appeal, application for extraordinary appeal, petition for recusal appeal, brief, motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, —

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the issues, claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support;
- (4) the denial of factual contentions is warranted on the evidence; and
- (5) the filing is neither repetitive, frivolous nor vexatious and does not constitute an abuse of the judicial process.

Rule 17.02. Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that subdivision 17.01 has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision 17.01 or are responsible for the violation.

(1) How Initiated.

(a) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision 17.01. It shall be served as provided in Tennessee Rule of Appellate Procedure 20, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged filing, issue, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(b) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision 17.01 and directing an attorney, law firm, or party to show cause why it has not violated subdivision 17.01 with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraph (a), the sanction may consist of, or include: directives of a nonmonetary nature, such as screening mechanisms to deter repetitive, frivolous or vexatious filings that constitute an abuse of the judicial process; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(a) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(b) Sanctions available pursuant to this rule may include, but are not limited to, those authorized pursuant to Tennessee Code Annotated § 27-1-122.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(4) Exception to the Rule. Monetary sanctions shall not be imposed against court appointed counsel for indigent parties in cases involving the termination of parental rights and/or dependency and neglect proceedings.

Comment. The type of nonmonetary sanctions contemplated under this rule include but are not limited to those addressed in *John Jay Hooker v. Don Sundquist*, et al., 150 S.W.3d 406 (Tenn. Ct. App. 2004); *John Jay Hooker v. W. Frank Crawford*, et al., M2005-00052-COA-R3-CV, 2006 WL 140379 (Tenn. Ct. App., Jan. 17, 2006) perm. app. denied Sept. 5, 2006; *Deborah Lacy v. Vanderbilt University Medical Center*, et al., 2018 WL 6251133 (Tenn. Cir. Ct. July 26, 2018) (Trial Order).