

Kim Meador

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From: Myers Morton <Myers.Morton@knoxcounty.org>  
Sent: Wednesday, August 27, 2025 7:36 PM  
To: appellatecourtclerk  
Subject: Proposed Rule Changes



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Thank you for the opportunity to comment.

Rule 20B includes the following provisions:

“(7) Liability. This Rule does not create any right of action against the Appellate Courts or the Clerk or their respective members, employees, or agencies, nor does it affect any immunity or defense to which a Court or the Clerk, or their respective members, employees, or agencies may be entitled.”

What about liability of lawyers making a mistake and erroneously failing to redact confidential information? Does this rule create a cause of action? Is it negligence per se?

Will this make the court of appeals' judges and clerks witnesses? And your record evidence?

Also, the governmental tort liability act covers “servants” in the definition of “employee.”

(2) “Employee” means and includes any official (whether elected or appointed), officer, employee or servant, or any member of any board, agency, or commission (whether compensated or not), or any officer, employee or servant thereof, of a governmental entity, including the sheriff and the sheriff's employees and, further including regular members of voluntary or auxiliary firefighting, police, or emergency assistance organizations;

T.C.A. § 29-20-102 (Lexis Advance through the 2025 Regular Session)

What about your bailiffs?

Thank you.

Myers Morton



**RAYBIN & WEISSMAN, P.C.**

ATTORNEYS AT LAW

David L. Raybin | David J. Weissman | Benjamin K. Raybin

August 28, 2025

James Hivner, Clerk

Via email: [appellatecourtclerk@tncourts.gov](mailto:appellatecourtclerk@tncourts.gov)

**Re: 2026 Rules Package (Tenn. R. Crim. P. 41)**

Dear Mr. Hivner:

This is a comment in support of the proposed amendment to Tenn. R. Crim. P. 41, which expands the ability to move to suppress and return unlawfully seized property, with one small suggested modification.

The amended rule would have significantly assisted with a case I had which received some media attention and has been fully adjudicated (and thus will not come before the Court). My client had several birds of prey which she maintained for her business as a falconer and educator. Officers with the TWRA, under a misguided belief she had committed regulatory violations, obtained a search warrant to physically seize all her birds. However, since no criminal charges were filed at that time, I concluded we had no vehicle to challenge the seizure in state court. I met with the District Attorney's Office to ask them to immediately bring charges or else return the birds, but even then it was months until criminal summonses were issued.

As soon as my client had an open criminal case, I promptly filed a motion to suppress. When the motion was finally heard weeks later, the judge agreed the birds were illegally seized and ordered their return. A dismissal of the criminal charges followed soon afterwards. Unfortunately, during the six months the birds were seized, one died and several developed permanent disabilities, and my client's business was devastated. We subsequently filed a federal civil rights lawsuit and obtained a significant settlement from the State.

The proposed amended Rule would have allowed us to immediately file a motion to suppress and prevented the bulk of harm caused by the illegal seizure. I thus strongly support the amendment and appreciate the Court's action in fixing this gap in Tennessee law.

My only suggestion is to change "Circuit Court" in the proposed section (g)(2) to "Circuit or Criminal Court" to clarify that a motion can be filed in either court in judicial districts with separate courts of record. The Advisory Commission Comments to Rule 41 state in part: "The motion under subdivision (g) is meant to apply only to courts of record of general criminal trial jurisdiction such as Circuit and Criminal Court." The original intent of the Rule was certainly to

encompass both. However, by listing only one, there could be confusion about whether a motion in the other is proper.

***RAYBIN & WEISSMAN, P.C.***

***Ben Raybin***

**Benjamin K. Raybin**

**Kim Meador**

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**From:** Ben Raybin <braybin@nashvilletnlaw.com>  
**Sent:** Thursday, August 28, 2025 1:43 PM  
**To:** appellatecourtclerk  
**Subject:** Comment on 2026 Rules Package (Tenn. R. Crim. P. 41)  
**Attachments:** Ltr to Clerk re Rule Amendment 8-28-25.pdf

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Please see attached a comment on the proposed amendment to Tenn. R. Crim. P. 41 in the 2026 Rules Package.

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