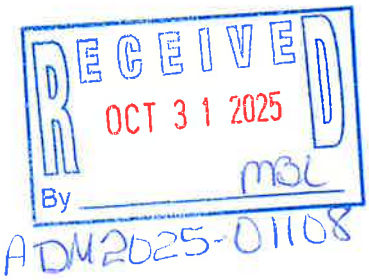

Knoxville Bar Association
505 Main Street, Suite 50
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Knoxville, TN 37901-2027
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October 31, 2025

By Email: appellatecourtclerk@tncourts.gov

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

Re: ADM 2025-001108

Dear Mr. Hivner:

Pursuant to the Tennessee Supreme Court's Order referenced above, the Knoxville Bar Association ("KBA") Professionalism Committee ("Committee") carefully considered the amendments to the Tennessee Rules of Appellate, Civil, and Criminal Procedure proposed by the Advisory Commission that are attached to the Order. The Committee presented a report with its recommendation on the proposed amendments at the October 22, 2025 meeting of the KBA Board of Governors (the "KBA Board"). After consideration, the KBA Board submits the following comment on one aspect of the proposed amendment to Rule 41(g) of the Tennessee Rules of Criminal Procedure, namely, in which courts motions for return of seized property are to be filed.

The KBA supports amending Rule 41(g) of the Tennessee Rules of Criminal Procedure to clarify which courts may hear motions for return of seized property. The proposed amendment provides that a motion for return of seized property "must be filed with the Circuit Court in the judicial district where the search warrant was issued or the Circuit Court with jurisdiction over the place where the property was seized."

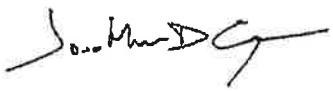
In the KBA's view, that language may cause some question or confusion in jurisdictions, like Knox County, that have a separate Criminal Court. Even if "Criminal Court" is technically Circuit Court, litigants and clerks in jurisdictions with a Criminal Court may interpret the rule to require that a motion for return of seized property be filed in a Circuit Court.

Also, there could be benefits to permitting a motion for return of seized property to be filed in a Sessions Court handling a related criminal case. The Sessions judge in the case may already be familiar with the matter. In addition, allowing the motion to be filed before a Sessions judge could be beneficial in jurisdictions where Circuit judges are not sitting all the time.

Based on these considerations, the KBA respectfully suggests that the second sentence of proposed Rule 41(g)(2) be replaced as follows: "The motion must be filed in the Circuit Court, Criminal Court, or Sessions Court in the judicial district where the search warrant was issued, where the property was seized, or where a related criminal case was or is pending."

As always, the KBA appreciates the invitation to consider and comment on proposed rules changes.

Sincerely,



Jonathan D. Cooper, President
Knoxville Bar Association

cc: Tasha C. Blakney, KBA Executive Director (via email)
Executive Committee of the Knoxville Bar Association

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES OF APPELLATE PROCEDURE, CIVIL PROCEDURE AND CRIMINAL PROCEDURE

No. ADM2025-~~0118~~ 01108 – Filed: August 22, 2025

RESPONSE TO INVITATION FOR PUBLIC COMMENT

In response to the proposed addition of Rule 20B to the Tennessee Rules of Appellate Procedure, as part of the Court's 2026 Rules Package, the Executive Committee of the Tennessee District Public Defenders Conference ("Conference"), expresses concerns with the redaction requirements in the proposed amendment.

I. REDACTION REQUIREMENTS IN PROPOSED AMENDMENT TO TENNESSEE RULES OF APPELLATE PROCEDURE

The Conference has concerns with several of the items listed as "confidential information" that would be required to be redacted from appellate filings. In particular, subsection (2)(d), subdivision,

> (v) names of persons known to be minors;
>
> (vi) case numbers of confidential, expunged, or sealed records in cases other than the one in which the Filing is made;
>
> (vii) information identifying a person receiving mental health or substance use-disorder services;
>
> (viii) information identifying victims of sexual offenses;

(ix) medical information the confidentiality of which is protected by Tennessee or federal law; and

(x) records of students in education institutions the confidentiality of which records is protected by Tennessee or federal law.

First, it is already common practice in the appellate courts to identify victims of sexual offenses by their initials. Is the terminology "information identifying victims of sexual offenses" intended to be broader than current practice? If so, how will an appellate attorney determine how much information is necessary to avoid identification of a victim, particularly in a case originating from a small rural jurisdiction? Will appellate attorneys be required to redact all names in a sex offense brief? Will appellate attorneys be required to redact the city, county, and other location information from the captions, statements of the case, and/or statements of facts in appellate briefs? It is unclear from the plain language of the rule the scope of information that would need to be redacted. Relatedly, appellate attorneys may not have sufficient information in the record to ascertain whether a person named in an appellate brief is a minor. There may be cases where it will be impossible to know if a person is a minor and, therefore, impossible to know whether redaction of a person's name is required by the proposed rule. To avoid improper identification of minors and victims of sexual offenses, more clarification is needed to advise appellate attorneys about the scope of redaction required by the proposed new rule in subdivisions (2)(d)(v) and (viii).

Second, public defenders routinely have clients who are receiving mental health or substance use disorder services, or who did receive such services at one time. Those services and a client's responsiveness to them are routinely the subject of sentencing and probation appeals. There are numerous instances in which the only issue raised on appeal by a public defender concerns the mental health or substance use disorder of the client. How would a public defender

redact a filing properly in which the sole issue is that matter? Would the proper avenue be to always file such a brief under seal? Or is the intent of the rule to protect all persons other than criminal defendants from such disclosure of mental health and substance-use disorder services? If the rule is not intended to protect criminal defendants, it is unclear how an appellate attorney is expected to know whether any other person who may be identified in the brief is someone who is receiving mental health or substance-use disorder services, unless the person so states on the record, and that statement is relevant to the appeal. For example, it may be necessary to discuss an alleged victim's self-reported mental health needs and related services when challenging a victim impact statement related to sentencing in a criminal case. Would all such references need to be redacted from an appellate brief? Again, is the better practice to simply file all briefs involving mental health and substance-use disorders under seal? To avoid over-redaction or filing too many briefs under seal, more clarification is needed to advise appellate attorneys about the scope of redaction required by the proposed new rule in (2)(d)(vii).

Third, public defenders are not knowledgeable on the kind of medical or educational information which is or is not protected by Tennessee or federal law. Public defender clients have filed numerous sentencing appeals which depended largely on their age, education, and medical issues. More broadly, appellate attorneys in criminal cases may not know whether certain information is protected by federal or state law or whether certain information has been obtained from a case that was itself confidential, expunged, or sealed. Considering the potential for sanctions if a brief is not properly redacted or filed, more clarification is necessary to ensure that appellate attorneys can act in good faith without fear of punishment due to a failure or inability to comprehend the intended scope of the proposed new rules in (2)(d)(vi), (ix), and (x).

As a final comment, the Conference expresses its concern that the proposed new rules will likely have the effect, intended or not, of requiring significant redaction or sealed briefs in a large number of criminal appeals. In addition, the Conference questions the necessity of requiring the high level of redaction that appears to be contemplated by these proposed new rules if the same rules will not be applied to the opinions published by the appellate courts. Even if appellate attorneys expend the significant additional time and resources that will be necessary to comply with the proposed rules, redacting confidential information from the appellate briefs will not protect the information from public disclosure if appellate court opinions continue to be published without redaction on the public AOC website, Westlaw, and other online sources.

II. CONCLUSION

This comment is not all inclusive but represents some of the more obvious issues for public defenders under the proposed rule. The Conference respectfully expresses its concerns that the proposed addition to the Tennessee Rules of Appellate Procedure will lead to confusion and unnecessary work for public defenders and other appellate attorneys.

Respectfully submitted,

Tennessee District Public Defenders Conference

By: 

Robert Taswell Gardner
Tenn. B.P.R. #027248
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By: _____

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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

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

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

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

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424 Church Street, Suite 2120
Nashville, Tennessee 37219

E-Mail: BRaybin@NashvilleTnLaw.com
Telephone: 615-256-6666 ext. 243
Fax: 615-254-4254

Kim Meador

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

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