

November 19, 2025

James M. Hivner
Clerk of the Appellate Courts
Tennessee Supreme Court
Re: 2026 Rules Package
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Sent via email: appellatecourtclerk@tncourts.gov

Re: Order No. ADM2025-01108
In Re: Amendments to Tennessee Rules of Appellate Procedure, Civil Procedure and Criminal Procedure, Proposed Rule of Appellate Procedure 20B

Dear Mr. Hivner:

The Tennessee Bar Association ("TBA") respectfully submits the following Comment to Supreme Court Order No. ADM2025-01108 regarding the proposed amendments to the Tennessee Rules of Appellate Procedure. The proposed changes to the rules were sent to the relevant TBA sections for comment, and we received feedback from the Executive Councils of the Appellate Practice Section and the Litigation Section, which TBA leadership carefully considered. The TBA now submits the following comments for the Tennessee Supreme Court's consideration.

The TBA's comments are limited to the proposed changes to several provisions of the newly proposed Tennessee Rule of Appellate Procedure 20B ("Public Access to Appellate Court Filings and Privacy Protection").

While we support the Court's goal of making appellate filings more freely accessible to the public, we are concerned that Proposed Rule 20B, as it is currently drafted, will result in adverse consequences to litigants, attorneys, and the courts. In particular, we are concerned that certain provisions of Proposed Rule 20B are not sufficiently clear and will increase the cost of legal services in a state that already experiences a lack of access to justice. The end result will be a further reduction of the availability of appellate services for those that live in the legal deserts of the state, as well as for those other populations, wherever situated, who lack the means to easily obtain access to affordable appellate counsel.

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Issues with Respect to the Definition of Confidential Information

Proposed Rule 20B(3)(a) provides: “Unless the Court orders otherwise, all Confidential Information must be omitted or redacted from a Filing before the Filing is filed or submitted in an Appellate Court.”

The definition of “Confidential Information” given in the Proposed Rule contains ten subparts, some of which are clear, practical, and uncontroversial. For instance, Proposed Rule 20B(2)(d)(i), which specifies that appellate filers must redact “Social Security numbers, driver’s license numbers, taxpayer identification numbers, and passport numbers” is a clear rule that can be easily implemented. Both lawyers and nonlawyers generally understand what the specified items are, and they can be easily redacted from any brief without profound increased costs or confusion as to what is required. Similarly, subsection 20B(2)(d)(ii) of the proposed rule, which requires redaction of financial account numbers and passwords, is also clear and practical.

Certain other subsections of Proposed Rule 20B, however, suffer from a lack of clarity and a propensity to increase costs. We address these below.

1. Proposed Rule 20B(2)(d)(ix) specifies that appellate filers must redact from their filings “medical information the confidentiality of which is protected by Tennessee or federal law.” This definition is extremely broad, imprecise, and unworkable. Healthcare privacy is an extremely complex area of the law. Most appellate attorneys are not well-versed in the intricacies of federal and/or state healthcare information privacy laws. Moreover, such law is constantly changing. This proposed rule would require attorneys participating in an appeal to (1) do extensive research into healthcare privacy law to determine what information is covered, and what information is not, simply for the purpose of redacting their filings; or (2) hire outside counsel with expertise in the healthcare information privacy arena to comb the appellate filings and identify which information needs to be redacted. This process would undoubtedly increase the costs of appellate proceedings for consumers and impede access to justice in this state.
2. Proposed Rule 20B(2)(d)(vii) specifies that appellate filers must redact from their filings “information identifying a person receiving mental health or substance-use-disorder services.” This proposed rule is both overbroad and unclear. First, it is unclear what constitutes “information identifying” a person. Does the rule require only that the names of persons receiving such treatment be redacted, or must other identifying information such as status (e.g., “mother”) or place of employment be redacted as well?

Additionally, as a cost matter, the proposed rule would require a substantial amount of redaction in any case in which a party had received mental health or substance-use-disorder services. For instance, in a child custody case in which one of the

parents had received counseling, the parent's name (and any other "identifying" information) would need to be redacted throughout the entire filing – including on the cover page. If both parents had received counseling, then the entire case name would need to be redacted. Similarly, if a criminal defendant had a history of substance abuse or mental health treatment, this rule would seemingly require that the criminal defendant's name be redacted throughout his or her entire brief. Briefs filed in the case of "State v. [Name Redacted]" would be fairly common. Again, the net effect of this rule would be to increase the costs of bringing appeals.

3. Proposed Rule 20B(2)(d)(vi) specifies that appellate filers must redact from their filings "case numbers of confidential, expunged, or sealed records in cases other than the one in which the Filing is made." While this proposed rule may seem simple, it is unclear how the attorney handling the appeal, who may or may not have been trial counsel, and who almost certainly was not counsel in "cases other than the one in which the Filing is made," would be aware of the confidential, expunged, or sealed status of other cases. Must an attorney examine the record of every case number that may appear in his or her brief to determine whether such a case contains confidential, expunged, or sealed records? The costs of this task would seem to outweigh the benefit. The disclosure of the case number of a sealed record is unlikely to cause substantial harm to the person protected by the sealed record. Rather, it is the disclosure of the information itself in the sealed case which will harm the person protected.

This proposed rule does not, however, merely require that the attorney redact such information as is confidential, expunged, or sealed in another case, but rather requires the attorney to redact the case number of the other case. A rule requiring filers to redact information under seal or expunged in a separate case would seem to be a more practical, effective rule in the context of appellate filings. Importantly, though the rule could require the redaction of information from expunged or sealed records, the rule should not require redaction of merely "confidential" information, as it is unclear what the definition of "confidential" is in this context and what specific information would be covered by such a rule.

4. Proposed Rule 20B(2)(d)(v) includes in the definition of Confidential Information that must be redacted "names of persons known to be minors." This is a good rule, and the TBA supports it, but its interplay with current practice needs to be clarified. Pursuant to Tenn. Code Ann. § 20-6-102, it is customary of both appellate courts and litigants to identify minors by their initials. *See, e.g., In re M.L.P.*, 281 S.W.3d 387 (Tenn. 2009); *In re Robert H.*, No. E2022-00809-COA-R3-PT, 2023 WL 3451534, at *1 n.1 (Tenn. Ct. App. May 15, 2023), *no appeal taken* ("In actions involving minors, it is this Court's policy to protect the privacy of the children by using only the first name and last initial, or only the initials, of the parties and witnesses, as appropriate.") In such situations, if a minor is identified by initials,

must the initials be redacted pursuant to this rule? Further, if a minor is identified by his or her first name and the first letter of his or her surname (e.g., “Jane D.”), then must the first name be redacted? Again, the TBA has no problem with this rule in principle, but its practical application should be clarified before implementation.

5. Proposed Rule 20B(2)(d)(viii) includes in the definition of Confidential Information that must be redacted “information identifying victims of sexual offenses.” In criminal appeals involving sexual offenses, the record is often replete with references to the victim that could constitute “identifying” information. For instance, if the victim is “the defendant’s spouse,” does that fact constitute “identifying” information that must be redacted? If the victim is a “classmate” at a school, must that information be redacted? The rule is vague and unclear on this point and should be clarified before the rule is implemented.

Finally, with respect to the other subsections of Proposed Rule 20B(d), which are not as objectionable as the ones identified here, the TBA would just like to note for the Court that the required redactions, while reasonable, do impose additional costs on attorneys, which will inevitably then be passed on to consumers. This might be a worthwhile trade-off if litigants could be sure that the redaction of their information by the appellate filers would somehow shield such information from public review. But it would not. Rule 20B does not preclude members of the public from accessing the appellate record from the Clerk’s office to obtain the underlying redacted information. Thus, litigants suffer the burden of increased costs, while not truly getting the benefit of increased security of their information.

Practical Issues with the Proposed Rule

Having highlighted certain substantive issues with the Rule, the TBA would also like to make the Court aware of some practical issues with its implementation.

1. Proposed Rule 20B(3)(f) provides: “A person or entity making a redacted Filing must also file an unredacted version of the Filing under seal.” However, if an attorney is using the Appellate Courts’ online filing system, TrueFiling, there is not presently an option that an attorney can select to electronically file a document “under seal.” All that can presently be done to electronically file a document “under seal” is that the attorney can place a note in the filing instructions asking the Clerk that the document be placed “under seal.” If the filing of documents “under seal” in the Appellate Courts is to become more frequent, then there should be a function in the Courts’ online filing system to facilitate that.
2. Proposed Rule 20B(5)(b) provides: “Redaction may be accomplished manually or by use of technology, such as redaction software.” However, as pertains to appellate e-filing, such redaction cannot be accomplished by manual means, as Supreme

Court Rule 46, § 3.02(b) provides: “All original documents (e.g., applications, briefs, motions, memoranda of law, and similar documents) that are e-filed shall be prepared through direct conversion from the word processing file to Portable Document Format and not through scanning of the original paper document.” Thus, e-filing, which is the most cost-effective method of filing documents in our Appellate Courts, precludes the manual redaction of filings as contemplated by the proposed rule. This means that all parties that wish to e-file in our appellate courts must figure out a way to do so “by use of technology, such as redaction software.” That means that all appellate filers, even if they file less than one appeal a year, must become well-versed in redaction technology.

3. Proposed Rule 20B(3)(b) provides: “When legal counsel makes the Filing on behalf of the person or entity counsel represents, counsel is responsible for omitting and redacting Confidential Information. When the Filing is made by a person or entity not represented by legal counsel, that person or entity is responsible for omitting and redacting Confidential Information.” Thus, the burden of doing the actual redaction required by Proposed Rule 20B will fall on attorneys – or pro se litigants. This Court is no doubt aware that there are many, many citizens of our State that live in “legal deserts” where they are primarily served by solo practitioners and small law firms. While a large firm may be able to successfully “eat” the costs of appellate redaction by engaging cutting-edge software or the services of highly skilled paralegals, smaller law firms and solo practitioners may not find it economically feasible to “eat” the costs of purchasing and becoming proficient in redaction software. Furthermore, solo practitioners and small-firm attorneys may reason that if appeals are going to result in a great amount of unpaid labor due to the need to redact filings, then such appeals may not be worth doing. This will do nothing more than increase the lack of access to justice in our state.

Immunity under Proposed Rule 20B of the Rules of Appellate Procedure

Upon the recommendation of the Litigation Section, the TBA also raises an additional issue related to the language in Rule 20B regarding immunity. The TBA is concerned about the proposed language in Rule 20B of the Rules of Appellate Procedure that purports to shield from liability court personnel but that also implies, by omitting filing attorneys and firms from the list of shielded entities, that a potential private cause of action exists or should exist against attorneys or firms that do not in all respects meet the complex redaction requirements of the proposed Rule. The TBA is concerned that the proposed language of Rule 20B, regardless of whether it can or should confer immunity or create an implied private cause of action, would create unintended liability exposure and impose compliance obligations that are unnecessary and disproportionately burdensome.

Conclusion

In conclusion, Proposed Rule 20B suffers from several issues of substantive clarity that should be addressed before the rule is implemented. Even if these issues are resolved, however, the proposed rule will still significantly increase the costs of access to justice for the citizenry. The burden of such increased costs will fall disproportionately on those persons who live in legal deserts or who otherwise lack the means to easily engage appellate counsel. For the foregoing reasons, the TBA respectfully asks the Court to decline adoption of Proposed Rule 20B, and to task the Advisory Commission with crafting a new proposed rule that increases public access to appellate filings without also unduly increasing costs to legal consumers and takes into account the additional concerns raised in this comment.

We wish to thank the Court for the opportunity to comment on the proposed amendments and considering our comments. If any additional information is needed, we are happy to provide any additional materials.

Sincerely,

A handwritten signature in cursive script, reading "Sheree C. Wright".

Sheree Wright
Executive Director

cc: TBA Executive Committee
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Will Perry, Chair, Litigation Section

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November 19, 2025

James Hivner, Clerk

Via Email: appellatecourtclerk@tncourts.gov

RE: 2026 Rules Package

Dear Sir,

Please find attached the comment on behalf the Tennessee District Attorneys General Conference to Rule 41(g) of the Tennessee Rules of Criminal Procedure. Number 8 on page 2 was intentionally left blank as we believe a reasonable amount of notice is warranted.

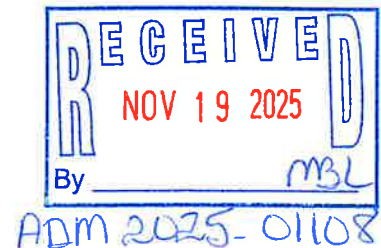
Sincerely,

Stacey B. Edmonson

District Attorney General

21st Judicial District, State of Tennessee

Chair, Justice & Professionalism Committee



**Tennessee District Attorneys General Conference Comments on
Proposed Change to Rule 41(g) of the Rules of Criminal Procedure**

The Tennessee District Attorneys General Conference (TNDAGC) appreciates the opportunity to comment on the proposed amendments to the Tennessee Rules of Appellate, Civil, Criminal, and Juvenile Procedure and the Tennessee Rules of Evidence.

The Tennessee District Attorneys General Conference (TNDAGC) was created by the General Assembly in 1961 to provide for a more prompt and efficient administration of justice in the courts of this state. It is comprised of the district attorneys general from the state's 32 judicial districts. The district attorneys general are elected for a term of eight years and are responsible for the prosecution of criminal cases on behalf of the state.

The TNDAGC takes a special interest in the Rules of Criminal Procedure.

This comment is specific to the proposed amendment to Rule 41(g).

The TNDAGC is supportive of an orderly process allowing a court of record to order the return of wrongfully seized property to its rightful owner.

The TNDAGC believes;

1. The Rule should set out the process in more detail.
2. It should be clear that this Rule and the procedures involved do not supplant procedures in place to contest property seized which is going through, or is the subject of, an administrative, a judicial or a civil or criminal asset forfeiture proceeding.
3. There should be a clear path to appeal a final order made by the trial court.

The TNDAGC would comment on the proposed amendment to the Rules of Criminal Procedure 41(g) as follows.¹

1. The Motion should be filed in the Criminal or Circuit Court where the motion to suppress originated.
2. The Motion should state that the time frame for appeals has been exhausted and attach a copy of the final order granting the motion to suppress or should show why the property should be returned at this time.

¹ TNDAGC would note that addressing a matter such as this may lend itself more to a statutory change than a rules change.

3. The Motion should clearly state the identity and address of the person(s)/entity asserting ownership.
4. The Motion should identify with specificity the property sought to be returned.
5. The Motion should identify any other person(s) or entities who have an interest or potential/contingent interest in the property.
6. Upon receipt of the motion the court must notify the government agency in possession of the property, the district attorney general in the jurisdiction where the motion to suppress originated and all person(s)/entities identified in the petition as having an ownership interest in the property, all of whom shall have standing to enter responses.
7. The Court shall have the authority to order publication if necessary to give notice to any John Doe(s) or others who may have an interest in the property.
8. Those notified by the Court shall have a reasonable time to respond after receiving notice but not less than _____ days.
9. Notwithstanding the time frames set out above, the parties involved shall have the right to present an agreed order to the court curtailing the time frame for resolution of the motion.
10. All person(s)/entities involved in the foregoing process shall have a right of appeal under Rule 3. The question should be addressed whether this appeal would be to the Court of Appeals or the Criminal Court of Appeals.

Submitted On Behalf of the Tennessee
District Attorneys General Conference
By:

A handwritten signature in black ink, appearing to read "Stacey Edmonson", written over a horizontal line.

Stacey Edmonson, District Attorney General
21st Judicial District, State of Tennessee
Chair, Justice & Professionalism Committee

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November 18, 2025

VIA EMAIL

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Re: 2026 Rules Package, No. ADM2025-01108

Dear Mr. Hivner:

The Reporters Committee for Freedom of the Press (“RCFP” or the “Reporters Committee”) submits these comments in response to the Supreme Court of Tennessee’s Order soliciting written comments concerning the Advisory Commission on the Rules of Practice & Procedure’s proposed amendments to the Rules of Appellate Procedure and Criminal Procedure (Dkt. No. ADM2025-01108).

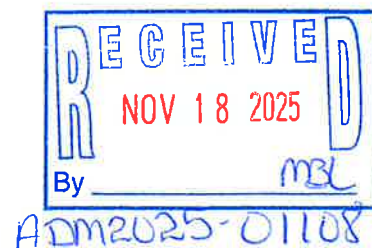
The Reporters Committee is an unincorporated nonprofit association whose attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.¹ It writes to provide comments on Proposed Rule 20B of the Tennessee Rules of Appellate Procedure, titled “Public Access to Appellate Court Filings and Privacy Protections” (“Proposed Rule 20B”). The Reporters Committee has long championed the public’s rights of access to judicial records and appreciates the opportunity to comment on this important issue.

Proposed Rule 20B

Proposed Rule 20B will govern the public’s right of access to filings made in Tennessee Appellate Courts. It describes categories of information that should either be omitted from filings or remain protected from public disclosure and provides a procedure by which certain protected information can be omitted or redacted from public filings.

At the heart of Proposed Rule 20B, is its definition of “Confidential Information” as “information that is protected from public disclosure or is required to be kept confidential by Tennessee law, federal law, or court rule or order,” *id.* at 20B(2)(d), including, among other things:

¹ More information about RCFP and its work is available at www.rcfp.org.



- Personal identification numbers such as Social Security numbers, driver's license numbers, taxpayer identification numbers, and passport numbers;
- Financial account numbers;
- Dates of birth;
- Names of persons known to be minors;
- Case numbers of confidential, expunged, or sealed records in cases other than the one in which the Filing is made;
- Information identifying a person receiving mental health or substance-use-disorder services;
- Medical information the confidentiality of which is protected by Tennessee or federal law; and
- Records of students in education institutions the confidentiality of which records is protected by Tennessee or federal law.

Id. Proposed Rule 20B explains that, if possible, Confidential Information should be omitted from filings, but then further states that “[w]hen it is necessary to include Confidential Information, that Information *must* be redacted before the Filing is filed or submitted.” *Id.* at 20B(3)(c)-(d) (emphasis added). It also provides that “[f]or good cause, the Court may order redaction of additional information in a redacted filing or may limit or prohibit public access to a Filing.” *Id.* at 20B(3)(e). To the extent a court record is ordered to be redacted or sealed, Proposed Rule 20B includes no requirement that courts provide any explanation detailing why a closure order was issued.

I. The Provision for Automatic Redactions of Categories of Information Raises Constitutional and Practical Concerns.

As an initial matter, there are constitutional issues with the extensive list of information that parties would be permitted to redact without a court order in Proposed Rule 20B and practical issues with other aspects of this list.

In *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), the U.S. Supreme Court held that mandatory closure of a courtroom based on a state statute for when a minor victim testifies in a criminal sex-offense trial was unconstitutional because, among other things, it did not require “particularized determinations in individual cases.” *Id.* at 611 n.27. While the Court understood that “safeguarding the physical and psychological well-being of a minor” was certainly a “compelling” interest, it did “not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest.” *Id.* at 608. Instead, the Court held that the trial court must make determinations with respect to such closures on a “case-by case basis” to “ensure[] that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary to protect the State’s interest.” *Id.* And, of course, “[t]he openness of judicial proceedings extends to judicial records.” *In re NHC*, 293 S.W.3d 547, 560 (Tenn. Ct. App. 2008) (citing *Huskey*, 982 S.W.2d at 362-63). Pursuant to this precedent, the automatic redactions that would be permitted under Proposed Rule 20B raise serious concerns.

Automatic redactions may be appropriate in limited circumstances. For example, under Tenn. Code Ann. § 20-6-102(a), unless otherwise required by statute, court rule, or court order, a court filing shall include only:

- (1) The last four (4) digits of the social security number and taxpayer identification number;
- (2) The year of the individual's birth;
- (3) The minor's initials; and
- (4) The last four (4) digits of the financial account number.

Id. This list is identical to the one in Fed. R. Civ. P. 5.2(a)(1)-(4). These provisions allow for the public to remain informed about judicial proceedings without risking the dissemination of information that may result in harm to an individual's personal or financial security. However, there is no need for Proposed Rule 20B to go farther than the Tennessee General Assembly and federal courts have gone.

In the case of minors, there may be a need for more nuance than is reflected in Proposed Rule 20B. The proposed rule mandates redaction of "[n]ames of persons known to be minors." This is at odds not only with Tenn. Code Ann. § 20-6-102(a)(3) (which contemplates inclusion of the minor's initials), but also statutes governing confidentiality of juvenile criminal proceedings.

In particular, Tenn. Code Ann. § 37-1-153(b) specifically provides that "petitions and orders of the court in a delinquency proceeding under this part shall be opened to public inspection and their content subject to disclosure to the public" in specific circumstances, including where the juvenile is 14 years old or older and/or where the delinquent act is one of the many listed serious offenses. On an appeal in a case involving a situation where Tenn. Code Ann. § 37-1-153(b) applies, there would be an unnecessary and nonsensical inconsistency where the name of the juvenile could be made public at the trial court level, but not, under Proposed Rule 20B, at the appellate level.

Proposed Rule 20B(3)(d)(ix) also provides that "[m]edical information the confidentiality of which is protected by Tennessee or federal law" should be redacted from court filings. This language, however, is broad and does not accurately reflect how certain medical information, even if generally protected under federal and state law, may in fact be subject to disclosure under certain circumstances. For instance, the Court of Appeals has held that otherwise confidential medical information should not be sealed "when it forms the basis of the trial court's decision or is otherwise relevant to the issues in the case." *Doe by Doe v. Brentwood Acad. Inc.*, 578 S.W.3d 50, 55 (Tenn. Ct. App. 2018).

Medical information may also form the basis of criminal charges. For example, some medical information about a victim is pertinent to knowing when to charge someone for assault versus aggravated assault. *Compare* Tenn. Code Ann. § 39-13-101(a)(1) (identifying an assault as causing "bodily injury") *with* Tenn. Code Ann. § 39-13-102(a)(1)(A)(i) (identifying aggravated assault as including assault that "[r]esults in serious bodily injury to another). Under Proposed Rule 20B, medical information related

to the charge would be automatically redacted, leaving the public in the dark about the allegations giving rise to a criminal prosecution.² Proposed Rule 20(B) fails to account for these subtleties in its broad command that all protected medical information must be redacted.

Finally, Proposed Rule 20B(2)(d)(vi), which provides for automatic redaction of “case numbers of confidential, expunged, or sealed records in cases other than the one in which the Filing is made,” is, at best, unclear. While “sealed” records and “expunged” records have a defined meaning, it is unclear what “confidential” records are in this context. It is also unclear why automatic redaction of “case numbers” in this provision are of the same import as the other categories of information listed. It makes little sense for the case number of a case that has a sealed record to itself be automatically redacted as the case number is not, standing alone, a sensitive record.

To the extent the Advisory Committee determines that providing for automatic redaction of categories of information beyond those set forth in Tenn. Code Ann. § 20-6-102(a)(1)-(4) is necessary, the Reporters Committee urges that Proposed Rule 20B be revised to delineate the circumstances in which certain identifying and medical information may be available for public inspection—that is, filed without redaction—pursuant to Tennessee law.

II. Constitutional Issues with Proposed Rule 20B.

While Proposed Rule 20B does not reference any particular source of law that creates a right of access to court records, the First Amendment to the U.S. Constitution and Article I, Sections 17 and 19 of the Tennessee Constitution provide for such a right. *See Press-Enterprise Co. v. Superior Ct. of Calif. for Riverside Cnty* (“*Press-Enterprise II*”), 478 U.S. 1, 9 (1986) (holding that a qualified First Amendment right of access applies to criminal proceedings); *Appl. of Nat’l Broad. Co., Inc.*, 828 F.2d 340, 343–45 (6th Cir. 1987) (applying *Press-Enterprise II* in deciding that there was a First Amendment right of access to records that pertained to criminal court proceedings); *Kocher v. Bearden*, 546 S.W.3d 78, 85 (Tenn. Ct. App. 2017) (citing Article I, Section 17 for rule that judicial records are presumptively open to the public); *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 n.3 (Tenn. Crim. App. 1998) (“Article I, Sec. 19 of the Constitution of Tennessee presumably extends a similar qualified right [of access to judicial records] to the public.”).

Given this constitutional framework, Proposed Rule 20B as currently drafted raises constitutional concerns, as discussed below.

² In addition, Tennessee law may require government entities to disclose protected health information (“PHI”), as defined by federal law, under certain circumstances. Tenn. Op. Atty. Gen. No. 15-48 at 3 (June 5, 2015) (“[W]hen Tennessee’s Public Records Act requires a covered entity to disclose PHI, the covered entity is permitted under HIPAA’s Privacy Rule to make the disclosure without running afoul of HIPAA as long as the disclosure complies with the Public Records Act.”).

A. Proposed Rule 20B permits sealing if mere “good cause” is shown, which would violate the federal and state constitutional right of access.

Proposed Rule 20B states that “[f]or *good cause*, the Court may order redaction of additional information in a redacted Filing or prohibit public access to a Filing.” *Id.* at 20B(3)(e) (emphasis added).

However, under the federal and state constitutional rights of access, a proponent of sealing must demonstrate that sealing is necessary to serve a *compelling interest*, and that such sealing is *narrowly tailored* to serve that interest. *E.g.*, *State v. Drake*, 701 S.W.2d 604, 607 (Tenn. 1985) (“The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.”) (citation omitted)). Indeed, the Court of Appeals has explicitly recognized that “good cause” is an inappropriately low standard to justify sealing court records. *In re Estate of Thompson*, 636 S.W.3d 1, 19 n.17 (Tenn. Ct. App. 2021) (applying compelling interest/narrow tailored standard and explaining that “many other jurisdictions apply the compelling interests, or a similar standard, when considering whether to seal public court records and a conclusion that good cause is the proper standard would be a departure from the weight of authority” (string cite omitted)).³

Proposed Rule 20B does not require courts to meet the heightened standard for closure pursuant to the constitutional rights of access. In instructing that information may be sealed by the Court based on a mere showing of “good cause,” Proposed Rule 20B is inconsistent with the standards mandated by the federal and state constitutions.

B. Proposed Rule 20B fails to require that a court ordering a closure articulate its reasons for doing so.

While Proposed Rule 20B anticipates that courts may order the sealing or redaction of information beyond the enumerated categories, it does not require that such orders provide any explanation regarding why information is being redacted and/or sealed. This is contrary to established precedent for the issuance of sealing orders.

³ While the Tennessee Supreme Court applied the “good cause” standard for sealing with respect to a request involving raw discovery materials that were required to be filed in *Ballard v. Herzke*, 924 S.W. 2d 662 (Tenn. 1996), the Court of Appeals has explained that “*Ballard* is quite clearly limited to documents produced in discovery, notwithstanding the fact that in that particular case, the documents were also part of the court record and, therefore, public records,” *In re Estate of Thompson*, 636 S.W.3d at 18 (citing *Ballard*, 924 S.W.2d at 662); *see also Bottorff v. Bottorff*, No. M2019-00676-COA-R3-CV, 2020 WL 2764414, at *3 (Tenn. Ct. App. Feb. 4, 2020) (“Tennessee courts have developed two methods of analysis to be applied when determining whether a trial court can properly order that these two categories of documents, those produced during discovery and those produced during trial, remain sealed.” (citing *Ballard*, 924 S.W.2d at 659; *Kocher I*, 546 S.W.3d at 86)). Good cause is not the proper standard for the sealing of ordinary legal filings.

When ordering that court records be sealed—or even redacted—a court is required to provide a detailed explanation of the reasons for the order. The Tennessee Supreme Court’s decision in *Drake* explained in no uncertain terms that when a closure order is issued the court must “make findings adequate to support the closure” and “shall articulate specific facts upon which [the court] has based a finding that closure is essential to preserve the moving party’s interest and his findings that no alternatives to closure will adequately protect that interest.” 701 S.W.2d at 608; *see also Shane Grp., Inc. v. Blue Cross Blue Shield*, 825 F.3d 299, 306 (6th Cir. 2016) (“[A] court’s failure to set forth those reasons—as to why the interests in support of nondisclosure are compelling, why the interests support access are less so, and why the seal itself is no broader than necessary—is itself grounds to vacate an order to seal.” (citations omitted)).

Proposed Rule 20B does not establish whether a court need provide any explanation when ordering additional information to be redacted or sealed. *Id.* at 20B(3)(e) (providing only that a court may order redaction or restrict access if “good cause” is found). Given that Proposed Rule 20B would permit courts to issue closure orders, it should also mandate that such orders articulate findings to justify any closure, per the constitutional framework detailed above.

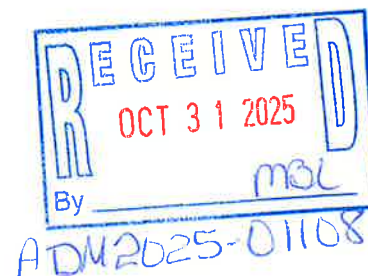
The Reporters Committee recommends Proposed Rule 20B be modified to ensure it complies with the constitutional rights of access pursuant to the First Amendment and Tennessee Constitution.

Conclusion

The Reporters Committee appreciates the opportunity to bring the aforementioned issues to the attention of the Court and would be pleased to provide any additional information to the Court upon request. Please do not hesitate to contact Reporters Committee Senior Staff Attorney Paul McAadoo (pmcadoo@rcfp.org) with any questions.

Sincerely,

Reporters Committee for
Freedom of the Press



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October 31, 2025

By Email: appellatecourtclerk@tncourts.gov

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James Hivner, Clerk of Appellate Courts
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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.

Executive Director
Tasha C. Blakney

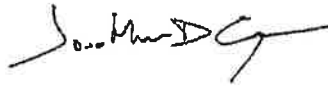
General Counsel
Adrienne L. Anderson

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,

A handwritten signature in black ink, appearing to read "Jonathan D. Cooper". The signature is stylized with a large, sweeping "J" and a long, horizontal stroke at the end.

Jonathan D. Cooper, President
Knoxville Bar Association

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



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

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

Benjamin K. Raybin
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Nashville, Tennessee 37219

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Kim Meador

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