

**ORIGINAL**

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**FILED**  
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NASHVILLE

IN RE: )  
)  
AMENDMENT OF RULE 30, )  
RULES OF THE )  
TENNESSEE SUPREME COURT )

No. ADMIN2015-00451

**COMMENT OF TENNESSEE COALITION FOR OPEN GOVERNMENT**

Tennessee Coalition for Open Government, Inc. ("TCOG") submits the following comment concerning the proposed amendments to Tennessee Supreme Court Rule 30 and strongly supporting this Court's adoption of the proposed revision of Rule 30 submitted to this Court by the Tennessee Bar Association in its recent comment to this Court:

The Tennessee Coalition for Open Government, Inc. ("TCOG") is the only non-partisan Section 501(c)(3) organization in Tennessee whose sole mission is to protect and promote citizen access to government information and public meetings. Included within TCOG's mission is preservation and enhancement of access to Tennessee courtrooms and judicial proceedings. TCOG operates as an alliance of citizens, media organizations, and good government groups. TCOG's mission rests on the belief that access to government information is crucial in informed citizen participation in a democratic society. Since its inception in 2003, TCOG has conducted research into open government issues, providing information about access issues to citizens, journalists, lawmakers and government officials. TCOG participates as a member of the National Freedom of Information Coalition, an alliance of similar open government groups in all 50 states who share information and programs with the goal of improving citizen access and education at all levels. The TCOG Board of Directors consists of 22 board members including

individual citizens, members of the Tennessee Press Association, the Tennessee Association of Broadcasters, the Associated Press, Tennessee chapters of the Society of Professional Journalists, good government groups including the Tennessee chapters of the League of Women Voters and Common Cause, and attorneys and law firms emphasizing First Amendment practice. Members of the Board of TCOG serve without compensation as a public service to the citizens of Tennessee.

TCOG has extensively studied this Court's proposed amendments to Tennessee Supreme Court Rule 30, this Court's Rule governing the presence of cameras and audio recorders in the courtroom. We have corresponded and spoken with representatives of media organizations, media outlets, editor, broadcasters, and journalists of all kinds, as well as citizens who care about transparency and openness of Tennessee's judicial system. These discussions have included those interested in access to Tennessee courts from Memphis to Mountain City. Among those involved in these discussions are Tennesseans who daily observe and report on court proceedings across the State.

Two common threads have run through all these discussions. First, they reflect a deep respect and love for Tennessee's courts and their tradition of openness – a tradition longer than that in our federal courts and more fundamentally effective. Tennesseans know more about their courts and what goes on in them because of this tradition of openness. Those with whom TCOG discussed Rule 30 believe that, without a tradition of good reporting on Tennessee judicial proceedings and how Tennessee judges and court handle them, the public debate and discussion concerning judicial elections at all levels in 2014 would have been far less informed and far less productive.

Second, these discussions revealed grave concern that the adoption of the Court's

proposed revision to Rule 30, as published with the Court's March 13, 2015, Order, would be a striking backward step away from Tennessee tradition of judicial openness. Many Tennessee journalists who have studied the Court's proposed revision are convinced that, were this Court to adopt its original proposed language in the form published in the Court's March 15, 2015, Order, ordinary working journalists would no longer be able to do their job without new, wholly impractical restrictions. TCOG believes these journalists are right, and believes that these concerns must be accommodated in any revision to Rule 30.

Among TCOG's specific concern are that this Court's originally published revision would require express approval, based on a journalist's application two days in advance of any courtroom reporting, for the use of any electronic device in a courtroom, regardless of the intended purpose or actual use of the device. No reporter of any kind – not an individual blogger, or a print newspaper reporter, or a TV reporter or producer, or a radio journalist, or a journalist writing a book about a trial – could bring into a courtroom, or use in a courtroom, any smartphone, tablet computer, or laptop computer, for any purpose whatsoever, without advance approval two days in advance. Absent this two-day-in-advance approval, no reporter could use her laptop to take notes, or her iPad to write a story on the proceeding. Without advance approval, no reporter could use her iPhone to communicate with her editor during a hearing, no matter how silently she did so (such as by texting). And if reporters cannot take their phones into courtrooms, this necessarily means they will not have them in the courthouse, thereby prohibiting them from using their phones even though everyone else (such as lawyers) will have their phones in the courthouse to use during breaks.

While two-day advance approval has worked reasonably well for TV camera access to courts under present Rule 30, journalists have told TCOG that media organizations often do not

become aware of newsworthy proceedings in time to make such applications and, when they do, a rule that forces a media organization to decide who will cover a hearing two days in advance and make application for them (and their particular devices) to be approved for coverage two days in advance, is simply impractical and unreasonably burdensome, to no good end.

Journalist and media organizations also have questioned the need for and purpose of such a broad reach of a revised Rule 30. Anyone who has covered or been present for a courtroom proceeding fully understands the need for decorum and order. At a most basic level, in order to a court's work to be done, any meaningful noise or distraction from members of the public and press can and should be controlled by the court. But journalists and media organizations know that the technology they use every day to do their work within courtrooms can be (and should be) used silently and without any distraction whatsoever to trial participants. Years of experience in Tennessee courtrooms, where such devices have now been successfully used, mostly without incident or disruption, confirm this.

Indeed, because this advance approval concept was written originally with TV cameras in mind, and included limitations on the number of cameras in a hearing and provisions for pooling, and because these provisions have not been tailored to cover this sweeping new scope of the definition of "electronic devices," any trial court would be left with no legal standard whatsoever to decide whether to permit a news reporter to bring her laptop into the courtroom to take notes or write her story or email her editor. What standard would a trial court use in this situation? Would it fit within *any* constitutional standard for a court to deny a reporter the ability to use a laptop (assuming its use was silent), but to permit the use of a pencil and paper, to take notes or write her story? Even if such distinctions were constitutional, on what grounds should a trial court be saddled with this responsibility? Regardless, the proposed revision gives trial judges no

help in figuring out when to permit the use of such devices. This rule-without-a-standard would be a backward step in public access to Tennessee courts.

On this basis, TCOG believes that that Rule 30 needs to updated to reflect that the tools that media can now use to record or broadcast video or audio in a courtroom have become dramatically smaller and dramatically more numerous. But TCOG also believes that because these new devices with video and audio capability are the same devices that journalists use every day to do their work of courthouse reporting, accommodation should and must be made to allow journalists to use these tools in an appropriate way, while simultaneously prohibiting their use to record or broadcast video or audio from a courtroom without the court approval traditionally required by Rule 30.

TCOG wholeheartedly agrees with the Court's obvious concern that Rule 30 must be updated. Adopted in 1996, before most Tennesseans used the Internet and before cameras and recording devices were as compact and ubiquitous as they are today, Rule 30 has worked well in carrying forward Tennessee's tradition of open courts into an era when video and audio recording and reporting on courtroom proceedings has become more prevalent. In 2015, however, when virtually every citizen and working journalist has at least one device as capable as a 1990s video camera of recording video or audio for broadcast, media and technology have changed dramatically. This Court must update Rule 30 to keep pace with these changes in order to maintain Tennessee tradition of open courts, as well as to maintain in Tennessee courts the authority to maintain decorum, order, and fair trial rights amidst a new media and technology environment.

TCOG believes that the line the Court should draw in updating Rule 30 should not be a line based on the identity or capability of *devices* (a standard that would be held hostage to the

latest developments and changes in technology (will watches be covered by the Rule in the next year?), but should instead be a line based on the use to which any device of any kind is put. The Rule should concern itself with conduct of those present in the courtroom, not the technology they carry.

For all these reasons, TCOG endorses and supports the proposed revision of Rule 30 recently proposed by the Tennessee Bar Association in its filed comment with this Court. The TBA proposal strikes an appropriate balance between allowing journalists to use the tools they need to continue their reporting on courts, while providing Tennessee courts the tool they need to regulate fully the core concern of Rule 30 – the recording and broadcast of video and audio of Tennessee court proceedings.

The TBA proposal recognizes that Rule 30 must be updated to recognize that a courtroom proceeding could well be recorded today for broadcast on an iPhone that a reporter carried in her purse to the courthouse. The TBA proposal also confirms that there remains a need to regulate (including requiring advance approval) of video or audio recording of courtroom proceedings. At the same time, the TBA proposal expressly removes from this requirement and regulation everyday reporting activity carried out with today's new technology tools.

In addition to better, more focused definitions of “electronic devices” and “coverage” that help draw this line, the TBA proposal also provides a better standard for court review of media requests filed within two days of a hearing at which video or audio coverage is sought. The TBA proposal also clarifies, using the longstanding language of the Tennessee Reporter's Shield Law, just who is a “journalist” covered by the Rule. The TBA proposal also includes an informative Preamble that states clearly the background and purpose of the Rule.

TCOG thus strongly supports the TBA proposed revision of Tennessee Supreme Court

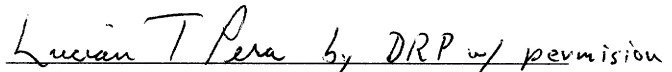
Rule 30, and urges this Court to adopt it as a means to update the Rule and preserve Tennessee's tradition of open courts.

Respectfully submitted,



DOUGLAS R. PIERCE (Tenn. BPR No. 10084)  
President,

Tennessee Coalition for Open Government, Inc.  
King & Ballow  
1100 Union Street Plaza  
315 Union Street  
Nashville, TN 37201  
(615) 726-5521



LUCIAN T. PERA (Tenn. BPR No. 11641)  
Vice President,

Tennessee Coalition for Open Government, Inc.  
Adams and Reese LLP  
Crescent Center  
6075 Poplar Ave., Suite 700  
Memphis, Tennessee 38119  
(901) 525-3234  
(901) 524-5419 (fax)

*Attorneys for Tennessee Coalition for Open  
Government, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit A by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.



Dwight Aarons  
President, National Bar Association,  
William Henry Hastie Chapter  
University of Tennessee College of Law  
1505 Cumberland Avenue, Room 363  
Knoxville, TN 37996-0681

Laura Baker  
President, Lawyers Association for Women  
Marion Griffin Chapter  
Law Offices of John Day PC  
5141 Virginia Way, Suite 270  
Brentwood, TN 37027

Heidi Barcus  
Immediate Past President  
Knoxville Bar Association  
London & Amburn, P.C.  
607 Market Street, Suite 900  
Knoxville, TN 37902

Barri Bernstein  
Executive Director  
Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219

Tasha Blakney  
President-Elect, Knoxville Bar Association  
Eldridge & Blakney PC  
P.O. Box 398  
Knoxville, TN 37901

Ben Boston  
President, Lawrence County Bar  
Association  
Boston, Holt, Sockwell & Durham PLLC  
P.O. Box 357  
Lawrenceburg, TN 38464

Neil Campbell  
President, Williamson County Bar  
Association  
Neil Campbell Attorney at Law  
136 4th Avenue South  
Franklin, TN 37064-2622

Curt Collins  
President, Greene County Bar Association  
C. Collins Law Firm  
128 S. Main Street, Suite 102  
Greeneville, TN 37743-4922

Chad Cox  
President, Paris-Henry County Bar  
Association  
Clark and Cox PLLC  
104 North Brewer Street  
Paris, TN 38242-4006

Wade Davies  
President, Knoxville Bar Association  
Ritchie, Dillard, Davies & Johnson PC  
P.O. Box 1126  
Knoxville, TN 37901

Imad Al-Deen Abdullah  
President, National Bar Association  
Baker Donelson Bearman Caldwell &  
Berkowitz  
165 Madison Avenue, #2000  
Memphis, TN 38103

Jeremy Ball  
President, Jefferson County Bar  
Association  
District Attorney Office  
P.O. Box 690  
Dandridge, TN 37725

Douglas Bates  
President, Hickman County Bar  
Association  
Bates & Bates  
P.O. Box 1  
Centerville, TN 37033

Julian Bibb  
President  
Tennessee Board of Law Examiners  
Stites & Harbison, PLLC  
401 Commerce Street, Suite 900  
Nashville, TN 37219

Doug Blaze  
Dean  
UT College Of Law  
1505 W. Cumberland Avenue, Room 278  
Knoxville, TN 37996

Ted Burkhalter  
President, Blount County Bar Association  
Burkhalter & Associates, PC  
605 Smithview Drive  
P.O. Box 5255  
Maryville, TN 37802-5255

Kirk Caraway  
Past President, Memphis Bar Association  
Allen, Summers, Simpson, Lillie &  
Gresham, PLLC  
80 Monroe Avenue, Suite 650  
Memphis, TN 38103-2466

Daryl Colson  
President, Overton County Bar Association  
Colson & Maxwell  
808 North Church Street  
Livingston, TN 38570-1134

Terri Crider  
President, Gibson County Bar Association  
Flippin, Atkins & Crider PC  
P.O. Box 160  
Humboldt, TN 38343

Michael Davis  
President  
Morgan County Bar Association  
216 N. Kingston Street  
P.O. Box 925  
Wartburg, TN 37887-0925

Colby Baddour  
President, Giles County Bar Association  
A. Colbrook Baddour, Attorney at Law  
P.O. Box 296  
Pulaski, TN 38478-0296

Laurel Ball  
President, East Tennessee Lawyers  
Association for Women  
Leitner, Williams, Dooley & Napolitan  
900 S. Gay St., # 1800 Riverview Tower  
Knoxville, TN 37902

Syd Beckman  
Dean  
Lincoln Memorial University Duncan  
School of Law  
601 West Summit Hill Drive  
Knoxville, TN 37902

Mark Blakley  
President, Scott County Bar Association  
Stansberry, Petroff, Marcum & Blakley PC  
2301 Jacksboro Pike, Suite 4C  
La Follette, TN 37766-2959

Suanne Bone  
Executive Director  
Tennessee Association of Criminal Defense  
Lawyers  
530 Church Street, # 300  
Nashville, TN 37219

David Byrd  
President, Hamblen County Bar  
Association  
Capps, Cantwell, Capps & Byrd  
P.O. Box 1897  
Morristown, TN 37816-1897

William Cockett  
Johnson County Bar Association President  
Smith & Cockett Attorneys  
247 West Main Street, P.O. Box 108  
Mountain City, TN 37683-0108

Bratten Cook  
President, Dekalb County Bar Association  
Bratten Hale Cook II  
104 N. 3rd Street  
Smithville, TN 37166

Creed Daniel  
President, Grainger County Bar Association  
Daniel & Daniel  
115 Marshall Avenue  
P.O. Box 6  
Rutledge, TN 37861-0006

Jason Davis  
President, Marshall County Bar Association  
Davis Law Firm  
113 W. Commerce Street  
Lewisburg, TN 37091



Dawn Deaner  
Tennessee Lawyers Fund for Client  
Protection Chair  
Metropolitan Public Defender's Office  
404 James Robertson Parkway, #2022  
Nashville, TN 37219

William Douglas  
President, Lauderdale County Bar  
Association  
P.O. Box 489  
Ripley, TN 38063-0489

Amanda Dunn  
SETLAW President  
Luther Anderson PLLP  
P.O. Box 151  
Chattanooga, TN 37401-0151

Joseph Ford  
President, Franklin County Bar Association  
McBee & Ford  
17 S. College Street  
Winchester, TN 37398

Shawn Fry  
President, Putnam County Bar Association  
Qualls & Fry PLLC  
165 E. Spring Street  
Cookeville, TN 38501

James Gass  
President, Sevier County Bar Association  
Ogle, Gass & Richardson PC  
P.O. Box 5365  
Sevierville, TN 37864

Charles Grant  
Immediate Past President, Nash. Bar Assoc.  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
211 Commerce Street, Suite 800  
Nashville, TN 37201-1817

Paul Hatcher  
President, Chattanooga Bar Association  
Duncan, Hatcher, Hixson & Fleenor PC  
1418 McCallie Avenue  
Chattanooga, TN 37404

Martin Holmes  
Federal Bar Association  
Nashville Chapter President  
Dickinson Wright, PLLC  
424 Church Street, Suite 1401  
Nashville, TN 37219

Tiffany Johnson  
President, Tennessee Alliance for Black  
Lawyers  
QP Legal Research & Writing Services  
1067 Fleece Place  
Memphis, TN 38104-5620

Mark Dessauer  
Tennessee Chapter President  
Federal Bar Association Northeast  
Hunter, Smith & Davis, LLP  
P.O. Box 3740  
Kingsport, TN 37664

Joanna Douglass  
President, Lawyers Association for Women  
Tennessee Department of Human Services  
225 Martin Luther King Dr., #210  
Jackson, TN 38301

Vinh Duong  
President, Tennessee Asian Pacific  
American Bar Association  
Waller Lansden Dortch & Davis LLP  
511 Union Street, #2700  
Nashville, TN 37210

Andrew Frazier  
President, Benton County Bar Association  
Whitworth Law Firm  
P.O. Box 208  
Camden, TN 38320

Jonathan Garner  
President, Robertson County Bar  
Association  
Walker & Garner  
122 6th Avenue, W.  
Springfield, TN 37172

Melanie Gober  
Executive Director  
Lawyers Association for Women Marion  
Griffin Chapter  
P.O. Box 190583  
Nashville, TN 37219

Kristin Green  
President, Bedford County Bar Association  
300 E. Lane Street  
P.O. Box 461  
Shelbyville, TN 37162-0461

James Haywood  
President, Haywood County Bar  
Association  
Haywood Law, PLLC  
50 Boyd Avenue, P.O. Box 438  
Brownsville, TN 38012-0438

Lynda Hood  
Executive Director  
Chattanooga Bar Association  
801 Broad Street, Suite 420  
Pioneer Building  
Chattanooga, TN 37402

Susan Jones  
Napier-Looby Chapter President  
Metropolitan Department Of Law  
108 Metro Court House  
P.O. Box 196300  
Nashville, TN 37219-6300

Jade Dodds  
Chapter President, National Bar  
Association, S.L. Hutchins Chapter  
Life Care Centers of America  
3001 Keith Street, NW, 3480  
Cleveland, TN 37320-3480

Hilary Duke  
President, Dickson County Bar Association  
Reynolds, Potter, Ragan & Vandivort, PLC  
210 East College Street  
Dickson, TN 37055

Matthew Edwards  
President, Cumberland County Bar  
Association  
Law Office of Matthew Edwards  
69 E. First Street, Suite 203  
Crossville, TN 38555-4575

Anne Fritz  
Executive Director  
Memphis Bar Association  
145 Court Avenue, Suite 1  
Memphis, TN 38103-2292

Sandy Garrett  
Chief Counsel  
The Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027-5078

Alberto Gonzales  
Dean  
Belmont University School of Law  
1900 Belmont Boulevard  
Nashville, TN 37212

Chris Guthrie  
Dean  
Vanderbilt University School of Law  
131 21st Ave. South, Room 108  
Nashville, TN 37203-1181

Lela Hollabaugh  
Board of Professional Responsibility Chair  
Bradley Arant  
1600 Division Street, Suite 700  
Nashville, TN 37203

Nathan Hunt  
President  
Montgomery County Bar Association  
Patton & Pittman  
109 S. Third Street  
Clarksville, TN 37040

Kevin Keeton  
President, Hawkins County Bar Association  
Point & Keeton, PC  
115 E. Washington Street  
Rogersville, TN 37857-3317

Suzanne Keith  
Executive Director  
Tennessee Association for Justice  
1903 Division Street  
Nashville, TN 37203

Karol Lahrman  
Executive Director  
Tennessee Lawyers Association for Women  
P.O. Box 331214  
Nashville, TN 37203

William Lawson  
President, Unicoi County Bar Association  
112 Gay Street, Suite A  
P.O. Box 16  
Erwin, TN 37650-0016

Keating Lowery  
President, Lawyers Association for Women  
Lawrence & Russell  
5178 Wheelis Drive  
Memphis, TN 38117

Matt Maddox  
President, Carroll County Bar Association  
Attorney at Law  
P.O. Box 827  
Huntingdon, TN 38344

Lee McVey  
President, Kingsport Bar Association  
The Mcvey Law Firm  
108 E. Main St., Suite 208  
Kingsport, TN 37660

John Miles  
President, Obion County Bar Association  
P.O. Box 8  
Union City, TN 38281

Mary Morris  
Federal Bar Association,  
Memphis/Mid-South Chapter President  
Burch, Porter & Johnson, PLLC  
130 North Court Avenue  
Memphis, TN 38103

Ashley Ownby  
President, Bradley County Bar Association  
P.O. Box 176  
Cleveland, TN 37364-0176

Beau Pemberton  
President, Weakley County Bar Association  
Law Office Of James H. Bradberry  
109 North Poplar Street  
P.O. Box 789  
Dresden, TN 38225-0789

Sarah Kennedy  
President, McMinn-Meigs County Bar  
Association  
Jerry N. Estes Law Offices, PLLC  
296 W. Madison Avenue  
Athens, TN 37303

Ed Lancaster  
Tennessee CLE Commission Chair  
TFIC  
P.O. Box 998  
Columbia, TN 38402

Peter Letsou  
Dean  
University of Memphis Cecil C.  
Humphreys School of Law  
1 North Front Street  
Memphis, TN 38103

Trevor Lynch  
Rutherford-Cannon County Bar  
Association  
320 W. Main Street, Suite 100  
Woodbury, TN 37190

Ian McCabe  
President, Loudon County Bar Association  
Law Office of Ian McCABe  
200 Prosperity Drive, Suite 113  
Knoxville, TN 37923

Brandon Meredith  
President, Sumner County Bar Association  
Phillips & Ingram  
117 E. Main Street  
Gallatin, TN 37066

Denny Mitchell  
President, White County Bar Association  
Mitchell Law Office  
112 South Main Street  
Sparta, TN 38583

David Myers  
President, Union County Bar Association  
105 Monroe Street  
P.O. Box 13  
Maynardville, TN 37807-0013

Tommy Parker  
President, Memphis Bar Association  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103

Sherry Percival  
National Bar Association,  
Ballard Taylor Chapter President  
Percival Law Office, P.C.  
219 N. Parkway, Suite 1  
Jackson, TN 38305-2717

Katherine Kroeger  
President, Anderson County Bar  
Association  
7th Jud. Dist. Office of the Public Defender  
127 N. Main Street  
Clinton, TN 37716-3607

Edward Lanquist  
President, Nashville Bar Association  
Patterson PC  
1600 Division St., Suite 500  
Nashville, TN 37203

William Locke  
President, Warren County Bar Association  
General Sessions Judge  
Warren County Courthouse  
P.O. Box 228  
Mcminnville, TN 37111-0228

Monica Mackie  
Executive Director  
Nashville Bar Association  
150 4th Avenue N; Suite 1050  
Nashville, TN 37219

Judy McKissack  
Director  
Tennessee Commission on Continuing  
Legal Education  
221 Fourth Avenue North, Suite 300  
Nashville, TN 37219

Donna Mikel  
Federal Bar Association  
Chattanooga Chapter President  
Burnette, Dobson & Pinchak  
713 Cherry Street  
Chattanooga, TN 37402

Darren Mitchell  
President, Campbell County Bar  
Association  
P.O. Box 375  
Jacksboro, TN 37757

Lynn Newcomb  
President, Cheatham County Bar  
Association  
Balthrop, Perry, Noe, Newcomb & Morgan  
102 Frey Street  
Ashland City, TN 37015

Jon Peeler  
President, Tennessee Association for  
Justice  
401 Church Street  
L&C Tower, 29th Floor  
Nashville, TN 37219

Samuel Perkins  
President, Tennessee Association of  
Criminal Defense Lawyers  
Perkins, Jones, & Associates  
80 Monroe, Suite 450  
Memphis, TN 38103-2520

Lisa Perlen  
Executive Director  
Tennessee Board of Law Examiners 401  
Church Street  
Nashville, TN 37219

Mario Ramos  
President, Tennessee Association of  
Spanish Speaking Attorneys  
Mario Ramos PLLC  
611 Commerce Street, Suite 3119  
Nashville, TN 37203

Cheryl Rice  
President, Tennessee Lawyers Association  
for Women  
Egerton, McAfee, Armistead & Davis, PC  
900 S. Gay Street, Suite 1400RIV  
Knoxville, TN 37902

Christie Sell  
President-Elect, Chattanooga Bar Assoc.  
Hamilton County  
General Session Court Judges  
600 Market Street, 203 Courts Building  
Chattanooga, TN 37402

Mike Spitzer  
Tennessee Bar Foundation Chair  
The Spitzer Firm  
19 Cedar Street  
Hohenwald, TN 38462

Joycelyn Stevenson  
President-Elect, Nashville Bar Association  
Littler Mendelson PC  
333 Commerce Street, #1450  
Nashville, TN 37201

Deborah Taylor Tate  
Administrative Director  
Administrative Offices of the Courts  
201 Fourth Avenue North, Suite 1900  
Nashville, TN 37219

Harriet Thompson  
President, Hardeman County Bar  
Association  
P.O. Box 600  
Bolivar, TN 38008

Tyler Weiss  
President, Monroe County Bar Association  
Worthington & Weiss, P.C.  
409 College Street N., Suite 1  
Madisonville, TN 37354-3103

Derreck Whitson  
President, Cocke County Bar Association  
P.O. Box 1230  
Newport, TN 37822

Jennifer Porth  
President, 15<sup>th</sup> Judicial District Bar Assoc.  
J. Stephen Brown PC  
224 W. Gay Street  
P.O. Box 792  
Lebanon, TN 37088-0792

Marsha Wilson  
Executive Director  
Knoxville Bar Association  
P.O. Box 2027  
Knoxville, TN 37901

Sunny Sandos  
President, Washington County Bar Assoc.  
West & Rose  
537 East Center Street  
P.O. Box 1404  
Kingsport, TN 37660-4869

Amber Shaw  
President, Tipton County Bar Association  
Law Office of J. Houston Gordon  
114 W. Liberty Avenue, Suite 300  
Covington, TN 38019

David Stanifer  
President, Claiborne County Bar  
Association  
Stanifer & Stanifer  
P.O. Box 217  
Tazewell, TN 37879

William Stover  
Immediate Past President,  
Tennessee Alliance for Black Lawyers  
500 Church Street, Suite 450  
Nashville, TN 37219-2370

James Taylor  
President, Rhea County Bar Association  
1374 Railroad Street, Suite 400  
Dayton, TN 37321-2211

Shawn Trail  
President, Coffee County Bar Association  
117 S. Spring Street  
Manchester, TN 37355

Matt West  
Jackson-Madison-Henderson County Bar  
Association  
Teel & Maroney PLC  
425 E. Baltimore Street  
Jackson, TN 38301

John Lee Williams  
President, Humphreys County Bar  
Association  
Porch Peeler Williams Thomason  
102 S. Court Square  
Waverly, TN 37185-2113

Ann Pruitt  
Executive Director  
Tennessee Alliance for Legal Services  
1220 Vintage Place  
Nashville, TN 37215

Beverly Rayburn  
President, Maury County Bar Association  
14 Public Square  
Columbia, TN 38401

Randall Self  
President, Lincoln County Bar Association  
Randall E. Self, Attorney At Law  
131A Market Street E.  
P.O. Box 501  
Fayetteville, TN 37334-0501

Jim Smith  
President, Roane County Bar Association  
305 W. Rockwood Street  
Rockwood, TN 37854

Jonathan Steen  
President, Tennessee Bar Association  
Redding, Steen & Staton, PC  
464 North Parkway, Suite A  
Jackson, TN 38305

Stephanie Stuart  
President, Bristol Bar Association  
1990 Highway 394, Suite C  
Blountville, TN 37617

Andrew Taylor  
President, Carter County Bar Association  
211 South Main Street  
Elizabethton, TN 37643-4518

James Tucker  
President, Tennessee Defense Lawyers  
Association  
Manier & Herod PC  
150 4th Avenue N., Suite 2200  
Nashville, TN 37219

Mary Whitfield  
Immediate Past President,  
Association for Women Attorneys  
Shea Moskovitz & Mcghee  
530 Oak Court Drive, Suite 355  
Memphis, TN 38117-3733

Matthew Willis  
President, Dyer County Bar Association  
Ashley Ashley & Arnold  
P.O. Box H  
Dyersburg, TN 38025

**FILED**  
JUL 23 2015  
Clerk of the Courts  
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**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

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IN RE: )  
 )  
AMENDMENT OF RULE 30, ) No. ADMIN2015-00451  
RULES OF THE )  
TENNESSEE SUPREME COURT )

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**COMMENT OF TENNESSEE BAR ASSOCIATION**

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The Tennessee Bar Association (“TBA”), in response to this Court’s March 13, 2015, Order soliciting comments concerning its published proposed revision to Tennessee Supreme Court Rule 30, urges the Court to adopt as a replacement for current Rule 30 the TBA’s proposed draft revision of Rule 30 attached as Exhibit A. (Exhibit A shows a version of the TBA’s proposed Rule 30 that reflects changes to and differences from the Court’s published proposed revision of Rule 30. Exhibit B shows a clean version of the TBA’s proposed new Rule 30.) In further support of the adoption of the TBA’s proposed revision, the TBA submits as follows:

**BACKGROUND AND OVERVIEW**

Tennessee courts have allowed cameras in court for over fifty years. This right generally has been argued to exist under the First Amendment’s free speech guarantees and the Sixth Amendment’s guarantee of public trials, as well as the Tennessee Constitution’s Law of the Land Clause found at Art. 1, Section 8, the Open Courts Clause of Art. 1, Section 17, and the Free Press guarantees of Art. 1, Section 19.

For most of the last two decades, this Court’s Rule 30 has carried forward this Tennessee tradition and provided a stable and workable framework for cameras in Tennessee courtrooms. Rule 30 was first enacted by this Court in 1996, and the first case construing the Rule came that

same year with *State v. Morrow*, No. 02C01-9601-CC-00022, 1996 WL 170679 (Tenn. Crim. App. April 12, 1996), in which this Court found that Rule 30 “creates a presumption in favor of in-court media coverage, including the presence of television camera, in accordance with the procedures set forth in the rule.”

For the last nineteen years, Rule 30 has successfully permitted Tennessee citizens to have fuller access to video and audio coverage of what goes on in their courts, with few significant problems and many successes. In the TBA’s view, with rare exceptions, Rule 30 has worked well. The media have been diligent in observing its restrictions and in using it to the public’s benefit in reporting on judicial proceedings; courts have been able, with little difficulty, to apply the standards of the Rule; and parties and lawyers have been able to voice their concerns about video and audio coverage and to have those concerns addressed by the courts.

In those two decades, however, the media environment and technology used to cover Tennessee courts have changed dramatically. In 1996, recording and transmitting video of a court proceeding usually required expensive and (by today’s standards) bulky equipment. Today, the very same functions can be performed by a smartphone, tablet computer, or laptop of the kind that virtually any journalist carries in her pocket or briefcase. As importantly, most journalists – indeed, most members of the public – today routinely carry just such devices with them every day. These new devices can often not only record, but transmit, video, audio, and text, from almost any remote location, to anywhere in the world, almost instantly. Thus, while the basic framework of Rule 30 remains valid, as the Court has noted, it is time for the Rule to be updated so that courts across Tennessee have the tools to address today’s technology in today’s courtrooms. The TBA applauds the Court’s initiative to update Rule 30.

With the help of its recently-organized Communication Law Section, the TBA has

closely reviewed the Court's proposed revision of Rule 30 and attaches a proposed version of Rule 30 as Exhibit A to this comment. Respectfully, the TBA believes that its attached draft better accomplishes the goal of updating Rule 30 to accommodate current technology. The TBA also believes that its proposed revision avoids the negative effect of some parts of the Court's published proposal that have received significant negative comment, particularly by practicing journalists who cover Tennessee courts. The TBA has discussed the Court's proposed revisions with numerous Tennessee journalists and media organizations and their counsel and explored their concerns in depth. The TBA submits that its proposed draft reasonably addresses these concerns, while still providing a strong framework for Tennessee courts to reasonably regulate cameras in the courts.

The most important change in the Court's proposed revision was a reasonable attempt to sweep within its coverage all the varied devices on which video or audio of courtroom proceedings can now be recorded in or broadcast from a courtroom, including smartphones, tablet computers, and laptop computers. For this reason, the Court's proposed new definition of "electronic device" is quite broad:

(6) **"Electronic Device"** means any device capable of capturing, recording, and/or transmitting video images, still images, or audio of a court proceeding and any device capable of transmitting real-time textual descriptions of a court proceeding. Electronic devices include, without limitation: film, digital, video, and any other type of cameras, cellular telephones, tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers, electronic tablets, and any other similar technological device with the ability to capture, record and/or transmit video or still images, audio, text, or other electronic communication data.

This definition includes virtually every "smartphone" or other device that has the ability to take a photograph, record a video, or record audio.

The Court's proposed definition of the term "coverage" would also extend the reach of the Rule by including the media's use of an electronic device to post information on a website or

send email or text messages from inside a courtroom during a court proceeding, regardless of how silently and discreetly this is done:

(1) **“Coverage”** means any recording, broadcasting, transmitting, or webcasting of a court proceeding by the media using television, radio, photographic, or recording equipment, or any other electronic device. “Coverage” also means media personnel’s posting on an internet website, communicating via social media, text messaging, or otherwise communicating via an electronic device about a court proceeding from inside the courtroom while court is in session. This definition of “coverage” is subject to the prohibitions listed in section C.

This sweeping proposed breadth of the Court’s proposed revisions has led, however, to many concerns on the part of working journalists that the Court’s proposed language would enact a new and unintended ban on the use of such devices for their ordinary work covering courtrooms, rather than merely regulating video and audio coverage of courts. Specifically, the Court’s proposed language could easily be interpreted to require that any journalist who wanted to use their smartphone, tablet, or laptop to take notes or draft a story about a trial or hearing they were attending, or email those notes or that draft story to their editor, would be required to get specific approval, two days in advance, in order to use many current electronic devices to do so. This would be true under the Court’s proposed revisions regardless of whether these uses of electronic devices were perfectly silent and non-distracting to others in the courtroom. In the TBA’s view, this type of requirement will often be unworkable as a practical matter (many journalists do not know two days in advance what courtroom proceedings they will be covering). It is also unnecessary to accomplish the stated purposes of Rule 30’s regulation of cameras in the courtroom. Indeed, some journalists have correctly pointed out that such a rule would unfairly – and perhaps unconstitutionally – discriminate between journalists based on whether they worked with a pencil and paper or a laptop.

These concerns are legitimate, and the TBA has no doubt that no such result was intended

by the drafters of the Court's proposed language. Today, in courtrooms all across Tennessee, lawyers (and judges) use all manner of new devices in the courtroom to do their work, and so do journalists. These uses of new technology and devices are routinely accomplished silently and without any distraction to anyone. And, just as use by lawyers (and judges) of these devices in the courtroom can and does enhance their productivity and accuracy, among other goals, there can be no doubt that the use by journalists of these devices allows them to work more efficiently, while also almost certainly increasing the accuracy and quality of their reporting of courtroom proceedings.

The TBA believes that the Court's valid interests in preserving decorum and good order in Tennessee courtrooms, and in fairly and thoroughly regulating the recording and transmission of video and audio of court proceedings, can be fully accomplished while more narrowly regulating the use of new technology. That is what the TBA's attached draft accomplishes.

In addition to addressing this concern, the TBA's draft also proposes other somewhat different approaches, discussed below, that the TBA believes better update Rule 30 to provide a framework for regulating cameras in Tennessee courts in the modern media and technology environment.

#### **PARTICULAR SECTIONS OF TBA DRAFT RULE**

The following is a brief review of a number of the more important provisions in the TBA's attached proposed revisions to Rule 30:

1. **Preamble**. A proposed Preamble explains that Rule 30 is a part of the tradition of open courts in Tennessee and throughout the United States. Several existing rules of the Supreme Court (Rules 7, 8, 9, 10, 38, 41) have a Preamble. The TBA believes that the Rule is improved by a clear statement of its purpose and the principles underlying the Rule.



2. **Rule 30A(2)**. The minor revision of the second sentence clarifies the burden and the standard for waiver of the two-day advance-approval requirement.

3. **Rule 30A(3)**. The proposed addition of the words “if practicable” establishes a standard for use by a court in deciding whether to waive the Clerk’s notification of the attorneys of record in a case of a request for media coverage.

4. **Rule 30A(4)**. This proposed new language is intended to emphasize that Rule 30 does not limit the use of an electronic device to write about a court proceeding while in the courtroom, so long as this is done silently and does not create a distraction. The transmission of data communications in the form of text only would be allowed without prior authorization from the court.

5. **Rule 30B(1)**. This proposed change limits the definition of “coverage” to the recording or transmitting of any video or audio of a court proceeding from within the courtroom. The TBA believes that limiting the definition of “coverage” in this way is consistent with the original purpose and spirit of Rule 30. Other forms of electronic communication from a courtroom, where performed silently and without distraction to the proceeding or its participants, pose no risk to the decorum and order within a courtroom that Rule 30 is intended to preserve.

6. **Rule 30B(2)**. The definition of “media” would be revised to include “persons who are independently engaged in gathering information for publication or broadcast,” a formulation borrowed from the Tennessee statute establishing a journalist’s limited privilege. *See* Tenn. Code Ann. § 24-1-208

7. **Rule 30B(3)**. This proposed change would eliminate from the scope of Rule 30 the words “any activity in the building in which the judicial proceeding is being held.” Rule 30 has not previously been extended outside the courtroom, and the TBA sees no need for any such

extension. If the proposed change is not made, this language could be interpreted to bring within the scope of Rule 30 a press conference being held on the first floor or in the hallway of a courthouse.

8. **Rule 30B(6)**. This proposed change limits the electronic devices subject to the requirements of Rule 30 to those that are intended to be used to capture, record, and transmit video, audio, or still images of a court proceeding. This reformulation would exclude from regulation under Rule 30 electronic devices used for the purpose of transmitting text-only message or email or posting messages to a website. Extending the reach of Rule 30 to include such devices is, in the TBA's view, unnecessary to accomplish the purposes of Rule 30.

9. **Rule 30C(5)**. The proposed change conforms the language of the Rule to other Tennessee rules concerning juvenile proceedings.

### CONCLUSION

For the foregoing reasons, the TBA urges the Court to adopt as a replacement for current Tennessee Supreme Court Rule 30 the TBA's proposed revision of Rule 30 attached as Rule 30.


Respectfully submitted,

By: /s/ by permission  
WILLIAM (BILL) HARBISON (007012)  
President, Tennessee Bar Association  
Sherrard & Roe PLC  
150 3<sup>rd</sup> Avenue S., #1100  
Nashville, TN 37201  
(615) 742-4200

By: /s/ by permission  
LUCIAN PERA (011641)  
Vice President, Tennessee Bar Association  
Adams and Reese LLP  
6075 Poplar Avenue, Suite 700  
Memphis, TN 38119  
(901) 524-5278

By: /s/ by permission  
JOHN WILLIAMS (000531)  
Chair, Tennessee Bar Association  
Communication Law Section  
Tune, Entekin & White PC  
315 Deaderick, Suite 1700  
Nashville, Tennessee 37238  
(615) 244-2770

By: /s/ by permission  
PAUL C. NEY (011625)  
General Counsel,  
Tennessee Bar Association  
Patterson Intellectual Property Law, PC  
1600 Division Street, Suite 500  
Nashville, Tennessee 37203  
(615) 242-2400

By:   
ALLAN F. RAMSAUR (005764)  
Executive Director,  
Tennessee Bar Association  
Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing has been served upon the individuals and organizations identified in Exhibit "C" by regular U.S. Mail, postage prepaid within seven (7) days of filing with the Court.

  
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# EXHIBIT A

**Proposed Revisions to  
Tennessee Supreme Court Proposal for Changes to Tenn. Sup. Ct. R. 30  
(as approved by the TBA House of Delegates and Board of Governors)**

[As proposed by the Tennessee Supreme Court, Tenn. Sup. Ct. R. 30 would be amended as indicated below by underlining (new text) and ~~overstriking~~ (deleted text).

The TBA's proposed additions and changes are shown in green.]

**Rule 30. Media Guidelines.**

**Preamble**

The Tennessee and United States Constitutions, as well as Tennessee common law, grant to the public and the media the right to attend and view proceedings in Tennessee courts, subject to certain limited restrictions, and place the burden of proof upon any party seeking closure. This right of access is critical to preserving the trust of the public in Tennessee's judicial system. This Rule is intended to provide a framework within which Tennessee courts shall maintain this tradition of open courts.

**A. Media Access.**

(1) **Coverage Generally.** Media coverage of public judicial proceedings in the courts of this State shall be allowed in accordance with the provisions of this rule. The coverage shall be subject, at all times, to the authority of the presiding judge to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair and impartial administration of justice in the pending cause.

(2) **Requests for Media Coverage.** Requests by representatives of the media for such coverage must be made in writing to the presiding judge not less than two (2) business days before the proceeding is scheduled to begin. For good cause shown, ~~The~~ presiding judge may waive the two-day requirement ~~at his or her discretion.~~

(3) **Notification of Request.** Notification that the media has requested such coverage shall, if practicable, be provided by the Clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the judge at the clerk's request if the request is made for media coverage of all or part of a docket. If the judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to section D(2).

(4) Scope of Rule. This Rule is not intended to limit or regulate the right of any member

of the public or the media to observe, write about, comment upon, or report upon any court proceeding while present in the courtroom during a court proceeding, so long as such conduct does not interfere with the court proceeding by threatening the decorum of the proceeding or creating a distraction in the proceeding. Members of the public and the media may use electronic devices in the courtroom for the purpose of writing, taking notes, and transmitting or receiving data communications in the form of text only, without obtaining prior authorization from the court.

## B. Definitions.

(1) **“Coverage”** means any ~~recording or broadcasting~~ recording, broadcasting, transmitting, or webcasting of a court proceeding by the media using television, radio, photographic, or recording equipment, or any other electronic device. ~~“Coverage” also means media personnel’s posting on an internet website, communicating via social media, text messaging, or otherwise communicating via an electronic device about a court proceeding from inside the courtroom while court is in session. This definition of “coverage” is subject to the prohibitions listed in section C.~~ **“Coverage” does not mean an activity that does not include the recording or transmitting of any video or audio of a court proceeding within a courtroom.**

(2) **“Media”** means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings or documentaries. **“Media” shall include persons who are independently engaged in gathering information for publication or broadcast.**

(3) **“Proceeding”** means any trial, hearing, motion, argument on appeal, or other matter held in open court that the public is entitled to attend. For the purposes of section C of this rule, a “proceeding” includes ~~any activity in the building in which the judicial proceeding is being held or~~ any official duty performed in any location as part of the judicial proceeding.

(4) **“Presiding Judge”** means the judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceedings.

(5) **“Minor”** means any person under eighteen (18) years of age.

(6) **“Electronic Device”** means any device ~~intended to be used in a court proceeding to capture, record, or transmit~~ ~~capable of capturing, recording, and/or transmitting~~ video images, still images, or audio of a court proceeding, ~~and any capable of transmitting real time textual descriptions of a court proceeding.~~ Electronic devices include, without limitation, film, digital, video, and any other type of cameras; cellular telephones; tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers; electronic tablets; and any other similar technological device with the ability to capture, record and/or transmit video or still images, ~~or audio, text, or other electronic communication data.~~

## C. Prohibitions.

(1) **Minor Participants.** Media coverage of a witness, party, or victim who is a minor is

prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

(2) **Jury Selection.** Media coverage of jury selection is prohibited.

(3) **Jurors.** Media coverage of jurors during the judicial proceeding is also prohibited.

(4) **Closed Proceedings.** Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

(5) **Juvenile Court Proceedings.** In juvenile court proceedings, if the court receives a request for media coverage, the court will notify the parties and their counsel of the request, and prior to the beginning of the proceedings, the court will advise the juvenile ~~accused~~, the parties, and the witnesses of their personal right to object, and that if consent is given, it must be in writing. Objections by a witness will suspend media coverage as to that person only during the proceeding, whereas objections by the juvenile ~~accused~~ in a delinquency proceeding ~~criminal~~ ~~ease~~ or any party to a juvenile proceeding ~~civil action~~ will prohibit media coverage of the entire proceeding.

(6) **Conferences of Counsel.** There shall be no audio pickup, recording, broadcast, or video closeup of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.

#### **D. Limitations.**

(1) **Discretion of Presiding Judge.** The presiding judge has the discretion to refuse, limit, terminate, or temporarily suspend, media coverage of an entire case or portions thereof, in order to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair administration of justice in the pending cause. Such exercise of the presiding judge's discretion shall be made following the procedures established in section D(2).

(2) **Evidentiary Hearing.** Before denying, limiting, suspending, or terminating media coverage, the presiding judge shall hold an evidentiary hearing, if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. If there is no opposition to media coverage, the presiding judge may consider matters that are properly the subject of judicial notice. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests in section D(1) is involved, and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest. The presiding judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

**E. Appellate Review.** Appellate review of a presiding judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

**F. Equipment and Personnel.**

(1) **Limitations.** ~~At least one, but no~~ No more than two television cameras with one ~~operator~~ photographer each will be permitted in any judicial proceeding. ~~two still~~ No more than two non-television photographers using not more than two cameras or other electronic devices each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding. The use of any electronic device for other coverage of a proceeding is limited to two devices per media representative.

(2) **Pooling Arrangements.** When more than one request for media coverage is made, the media shall select a representative to serve as a liaison and be responsible for arranging "pooling" among the media that may be required by these limitations on equipment and personnel. The identity of the person selected, including name, business address, phone and fax number, shall be filed with the clerk of the court in which the proceeding is to be held. Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(3) **Personal Recorders.** Media personnel may use hand-held ~~cassette-tape~~ audio recorders that are no more sensitive than the human ear without complying with section A(2) of this rule. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast or other audio transmission. Usage shall not be obtrusive or distracting, and no change of tape or other electronic storage medium shall be made during court sessions.

(4) **Print Media Other Coverage.** This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera, audio ~~or electronic~~ equipment, or other electronic device.

**G. ~~Sound and Light~~ Equipment Criteria.**

(1) **Distractions.** Only television, photographic and audio equipment and other electronic devices ~~which does~~ that do not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

(2) **Courtroom Light Source.** If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the court



facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the presiding judge, and without public expense.

(3) **Audio Pickup.** Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from ~~a television camera's~~ an electronic device's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding judge.

(4) **Technical Difficulties.** Court proceedings shall not be interrupted by media personnel because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

#### **H. Location of Equipment and Conduct of Media Personnel.**

(1) **Location of Equipment and Personnel.** The presiding judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

(2) **Alterations.** No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the presiding judge. Expenses for alterations shall be borne by the media.

(3) **Movement During Proceedings.** During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment or electronic devices ~~which~~ that disrupts or distracts from the proceeding. Media broadcast, photographic or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

(4) **Conduct of Media Personnel.** Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not detract from the proceeding.

**I. Impermissible Use of Media Material.** None of the film, ~~videotape, still photographs,~~ ~~or~~ video or still images, audio recordings, or other electronic coverage of proceedings under this rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceeding.

**J. Ceremonial Proceedings.** This rule shall not limit media coverage of investiture, ceremonial, or nonjudicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the presiding judge.

**K. Compliance.** Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the presiding judge.

# EXHIBIT B

**Proposed New Tenn. Sup. Ct. R. 30**  
*(as proposed by the Tennessee Bar Association)*

**Rule 30. Media Guidelines.**

**Preamble**

The Tennessee and United States Constitutions, as well as Tennessee common law, grant to the public and the media the right to attend and view proceedings in Tennessee courts, subject to certain limited restrictions, and place the burden of proof upon any party seeking closure. This right of access is critical to preserving the trust of the public in Tennessee's judicial system. This Rule is intended to provide a framework within which Tennessee courts shall maintain this tradition of open courts.

**A. Media Access.**

(1) **Coverage Generally.** Media coverage of public judicial proceedings in the courts of this State shall be allowed in accordance with the provisions of this rule. The coverage shall be subject, at all times, to the authority of the presiding judge to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair and impartial administration of justice in the pending cause.

(2) **Requests for Media Coverage.** Requests by representatives of the media for such coverage must be made in writing to the presiding judge not less than two (2) business days before the proceeding is scheduled to begin. For good cause shown, the presiding judge may waive the two-day requirement.

(3) **Notification of Request.** Notification that the media has requested such coverage shall, if practicable, be provided by the clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the judge at the clerk's request if the request is made for media coverage of all or part of a docket. If the judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to section D(2).

(4) **Scope of Rule.** This Rule is not intended to limit or regulate the right of any member of the public or the media to observe, write about, comment upon, or report upon any court proceeding while present in the courtroom during a court proceeding, so long as such conduct does not interfere with the court proceeding by threatening the decorum of the proceeding or creating a distraction in the proceeding. Members of the public and the media may use electronic devices in the courtroom for the purpose of writing, taking notes, and transmitting or receiving

data communications in the form of text only, without obtaining prior authorization from the court.

## **B. Definitions.**

(1) **“Coverage”** means any recording, broadcasting, transmitting, or webcasting of a court proceeding by the media using television, radio, photographic, or recording equipment, or any other electronic device. “Coverage” does not mean an activity that does not include the recording or transmitting of any video or audio of a court proceeding within a courtroom.

(2) **“Media”** means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings or documentaries. “Media” shall include persons who are independently engaged in gathering information for publication or broadcast.

(3) **“Proceeding”** means any trial, hearing, motion, argument on appeal, or other matter held in open court that the public is entitled to attend. For the purposes of section C of this rule, a “proceeding” includes any official duty performed in any location as part of the judicial proceeding.

(4) **“Presiding Judge”** means the judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceedings.

(5) **“Minor”** means any person under eighteen (18) years of age.

(6) **“Electronic Device”** means any device intended to be used in a court proceeding to capture, record, or transmit video images, still images, or audio of a court proceeding. Electronic devices include, without limitation, film, digital, video, and any other type of cameras; cellular telephones; tape recorders, digital voice recorders, and any other type of audio recorders; laptop computers; electronic tablets; and any other similar technological device with the ability to capture, record and/or transmit video or still images, or audio.

## **C. Prohibitions.**

(1) **Minor Participants.** Media coverage of a witness, party, or victim who is a minor is prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

(2) **Jury Selection.** Media coverage of jury selection is prohibited.

(3) **Jurors.** Media coverage of jurors during the judicial proceeding is also prohibited.

(4) **Closed Proceedings.** Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

(5) **Juvenile Court Proceedings.** In juvenile court proceedings, if the court receives a

request for media coverage, the court will notify the parties and their counsel of the request, and prior to the beginning of the proceedings, the court will advise the juvenile, the parties, and the witnesses of their personal right to object, and that if consent is given, it must be in writing. Objections by a witness will suspend media coverage as to that person only during the proceeding, whereas objections by the juvenile in a delinquency proceeding or any party to a juvenile proceeding will prohibit media coverage of the entire proceeding.

(6) **Conferences of Counsel.** There shall be no audio pickup, recording, broadcast, or video closeup of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, between counsel and the presiding judge held at the bench or in chambers, or between judges in an appellate proceeding.

#### **D. Limitations.**

(1) **Discretion of Presiding Judge.** The presiding judge has the discretion to refuse, limit, terminate, or temporarily suspend, media coverage of an entire case or portions thereof, in order to: (i) control the conduct of the proceedings before the court; (ii) maintain decorum and prevent distractions; (iii) guarantee the safety of any party, witness, or juror; and (iv) ensure the fair administration of justice in the pending cause. Such exercise of the presiding judge's discretion shall be made following the procedures established in section D(2).

(2) **Evidentiary Hearing.** Before denying, limiting, suspending, or terminating media coverage, the presiding judge shall hold an evidentiary hearing, if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. If there is no opposition to media coverage, the presiding judge may consider matters that are properly the subject of judicial notice. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests in section D(1) is involved, and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest. The presiding judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

**E. Appellate Review.** Appellate review of a presiding judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

#### **F. Equipment and Personnel.**

(1) **Limitations.** No more than two television cameras, with one photographer each, will be permitted in any judicial proceeding. No more than two non-television photographers using not more than two cameras or other electronic devices each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding.

(2) **Pooling Arrangements.** When more than one request for media coverage is made,

the media shall select a representative to serve as a liaison and be responsible for arranging “pooling” among the media that may be required by these limitations on equipment and personnel. The identity of the person selected, including name, business address, phone and fax number, shall be filed with the clerk of the court in which the proceeding is to be held. Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(3) **Personal Recorders.** Media personnel may use hand-held audio recorders that are no more sensitive than the human ear without complying with section A(2) of this rule. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast or other audio transmission. Usage shall not be obtrusive or distracting, and no change of tape or other electronic storage medium shall be made during court sessions.

(4) **Other Coverage.** This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera, audio equipment, or other electronic device.

#### **G. Equipment Criteria.**

(1) **Distractions.** Only television, photographic and audio equipment and other electronic devices that do not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

(2) **Courtroom Light Source.** If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the court facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the presiding judge, and without public expense.

(3) **Audio Pickup.** Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from an electronic device’s built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding judge.

(4) **Technical Difficulties.** Court proceedings shall not be interrupted by media personnel because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

## **H. Location of Equipment and Conduct of Media Personnel.**

(1) **Location of Equipment and Personnel.** The presiding judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

(2) **Alterations.** No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the presiding judge. Expenses for alterations shall be borne by the media.

(3) **Movement During Proceedings.** During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment or electronic devices that disrupts or distracts from the proceeding. Media broadcast, photographic or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

(4) **Conduct of Media Personnel.** Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not detract from the proceeding.

**I. Impermissible Use of Media Material.** None of the film, video or still images, audio recordings, or other electronic coverage of proceedings under this rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceeding.

**J. Ceremonial Proceedings.** This rule shall not limit media coverage of investiture, ceremonial, or nonjudicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the presiding judge.

**K. Compliance.** Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the presiding judge.

## Exhibit C

Dwight Aarons  
President, National Bar Association,  
William Henry Hastie Chapter  
University of Tennessee College of Law  
1505 Cumberland Avenue, Room 363  
Knoxville, TN 37996-0681

Laurel Ball  
President, East Tennessee Lawyers  
Association for Women  
Leitner, Williams, Dooley & Napolitan  
900 S. Gay St., # 1800 Riverview Tower  
Knoxville, TN 37902

Syd Beckman  
Dean  
Lincoln Memorial University Duncan  
School of Law  
601 West Summit Hill Drive  
Knoxville, TN 37902

Mark Blakley  
President, Scott County Bar Association  
Stansberry, Petroff, Marcum & Blakley PC  
2301 Jacksboro Pike, Suite 4C  
La Follette, TN 37766-2959

Ben Boston  
President, Lawrence County Bar  
Association  
Boston, Holt, Sockwell & Durham PLLC  
P.O. Box 357  
Lawrenceburg, TN 38464

David Byrd  
President, Hamblen County Bar  
Association  
Capps, Cantwell, Capps & Byrd  
P.O. Box 1897  
Morristown, TN 37816-1897

William Cockett  
Johnson County Bar Association President  
Smith & Cockett Attorneys  
247 West Main Street, P.O. Box 108  
Mountain City, TN 37683-0108

Bratton Cook  
President, Dekalb County Bar Association  
Bratton Hale Cook II  
104 N. 3rd Street  
Smithville, TN 37166

Creed Daniel  
President, Grainger County Bar Association  
Daniel & Daniel  
115 Marshall Avenue  
P.O. Box 6  
Rutledge, TN 37861-0006

Jason Davis  
President, Marshall County Bar Association  
Davis Law Firm  
113 W. Commerce Street  
Lewisburg, TN 37091

Colby Baddour  
President, Giles County Bar Association  
A. Colbrook Baddour, Attorney at Law  
P.O. Box 296  
Pulaski, TN 38478-0296

Beth Bates  
President, Tennessee Lawyers Association  
for Women  
West Tennessee Legal Services  
P.O. Box 2066  
Jackson, TN 38302

Barri Bernstein  
Executive Director  
Tennessee Bar Foundation  
618 Church Street, Suite 120  
Nashville, TN 37219

Tasha Blakney  
President, Knoxville Bar Association  
Eldridge & Blakney PC  
P.O. Box 398  
Knoxville, TN 37901

Charles Brasfield  
President, Tipton County Bar Association  
Brasfield & Brasfield  
114 West Liberty Avenue, P.O. Box 846  
Covington, TN 38019-0765

Neil Campbell  
President, Williamson County Bar  
Association  
Neil Campbell Attorney at Law  
136 4th Avenue South  
Franklin, TN 37064-2622

Curt Collins  
President, Greene County Bar Association  
C. Collins Law Firm  
128 S. Main Street, Suite 102  
Greeneville, TN 37743-4922

Chad Cox  
President, Paris-Henry County Bar  
Association  
Clark and Cox PLLC  
104 North Brewer Street  
Paris, TN 38242-4006

Wade Davies  
Immediate Past President  
Knoxville Bar Association  
Ritchie, Dillard, Davies & Johnson PC  
P.O. Box 1126  
Knoxville, TN 37901

Dawn Deaner  
Tennessee Lawyers Fund for Client  
Protection Chair  
Metropolitan Public Defender's Office  
404 James Robertson Parkway, #2022  
Nashville, TN 37219

Jeremy Ball  
President, Jefferson County Bar  
Association  
District Attorney Office  
P.O. Box 690  
Dandridge, TN 37725

Douglas Bates  
President, Hickman County Bar  
Association  
Bates & Bates  
P.O. Box 1  
Centerville, TN 37033

Julian Bibb  
President  
Tennessee Board of Law Examiners  
Stites & Harbison, PLLC  
401 Commerce Street, Suite 900  
Nashville, TN 37219

Suanne Bone  
Executive Director  
Tennessee Association of Criminal Defense  
Lawyers  
530 Church Street, # 300  
Nashville, TN 37219

Ted Burkhalter  
President, Blount County Bar Association  
Burkhalter & Associates, PC  
605 Smithview Drive  
P.O. Box 5255  
Maryville, TN 37802-5255

Kirk Caraway  
Past President, Memphis Bar Association  
Allen, Summers, Simpson, Lillie &  
Gresham, Pllc  
80 Monroe Avenue, Suite 650  
Memphis, TN 38103-2466

Daryl Colson  
President, Overton County Bar Association  
Colson & Maxwell  
808 North Church Street  
Livingston, TN 38570-1134

Terri Crider  
President, Gibson County Bar Association  
Flippin, Atkins & Crider PC  
P.O. Box 160  
Humboldt, TN 38343

Michael Davis  
President  
Morgan County Bar Association  
216 N. Kingston Street  
P.O. Box 925  
Wartburg, TN 37887-0925

Jade Dodds  
Chapter President, National Bar  
Association, S.L. Hutchins Chapter  
Life Care Centers of America  
3001 Keith Street, NW, 3480  
Cleveland, TN 37320-3480



Dan Douglas  
President, Lauderdale County Bar  
Association  
P.O. Box 489  
Ripley, TN 38063-0489

Vinh Duong  
President, Tennessee Asian Pacific  
American Bar Association  
Waller Lansden Dortch & Davis LLP  
511 Union Street, #2700  
Nashville, TN 37210

Joseph Ford  
President, Franklin County Bar Association  
McBee & Ford  
17 S. College Street  
Winchester, TN 37398

Anne Fritz  
Executive Director  
Memphis Bar Association  
145 Court Avenue, Suite 1  
Memphis, TN 38103-2292

Sandy Garrett  
Chief Counsel  
The Board of Professional Responsibility  
10 Cadillac Drive, Suite 220  
Brentwood, TN 37027-5078

Alberto Gonzales  
Dean  
Belmont University School of Law  
1900 Belmont Boulevard  
Nashville, TN 37212

Chris Guthrie  
Dean  
Vanderbilt University School of Law  
131 21st Ave. South, Room 108  
Nashville, TN 37203-1181

Mary Helms, President  
NE Tenn. Chapter Federal Bar Assoc.  
Wimberly, Lawson, Wright, Daves & Jones  
P.O. Box 1834  
Morristown, TN 37816

Lynda Hood  
Executive Director  
Chattanooga Bar Association  
801 Broad Street, Suite 420  
Pioneer Building  
Chattanooga, TN 37402

Tiffany Johnson  
President, Tennessee Alliance for Black  
Lawyers  
QP Legal Research & Writing Services  
1067 Fleece Place  
Memphis, TN 38104-5620

Joanna Douglass  
President, Lawyers Association for Women  
Tennessee Department of Human Services  
225 Martin Luther King Dr., #210  
Jackson, TN 38301

Matthew Edwards  
President, Cumberland County Bar  
Association  
Law Office of Matthew Edwards  
69 E. First Street, Suite 203  
Crossville, TN 38555-4575

Andrew Frazier  
President, Benton County Bar Association  
Whitworth Law Firm  
P.O. Box 208  
Camden, TN 38320

Shawn Fry  
President, Putnam County Bar Association  
Qualls & Fry PLLC  
165 E. Spring Street  
Cookeville, TN 38501

James Gass  
President, Sevier County Bar Association  
Ogle, Gass & Richardson PC  
P.O. Box 5365  
Sevierville, TN 37864

Charles Grant  
Immediate Past President, Nash. Bar Assoc.  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
211 Commerce Street, Suite 800  
Nashville, TN 37201-1817

Paul Hatcher  
President, Chattanooga Bar Association  
Duncan, Hatcher, Hixson & Fleenor PC  
1418 McCallie Avenue  
Chattanooga, TN 37404

Lela Hollabaugh  
Board of Professional Responsibility Chair  
Bradley Arant  
1600 Division Street, Suite 700  
Nashville, TN 37203

Nathan Hunt  
President  
Montgomery County Bar Association  
Patton & Pittman  
109 S. Third Street  
Clarksville, TN 37040

Susan Jones  
Napier-Looby Chapter President  
Metropolitan Department Of Law  
108 Metro Court House  
P.O. Box 196300  
Nashville, TN 37219-6300

Hilary Duke  
President, Dickson County Bar Association  
Reynolds, Potter, Ragan & Vandivort, PLC  
210 East College Street  
Dickson, TN 37055

Amber Floyd  
President, National Bar Association,  
Ben Jones Chapter  
Wyatt, Tarrant & Combs LLP  
1715 Aaron Brenner Drive, Suite 800  
Memphis, TN 38120

Jennifer Free  
Jackson-Madison-Henderson County Bar  
Association  
Byrd & Byrd PLLC  
116 N. Church St., 4<sup>th</sup> Fl., P.O. Box 2764  
Jackson, TN 38302-2764

Jonathan Garner  
President, Robertson County Bar  
Association  
Walker & Garner  
122 6th Avenue, W.  
Springfield, TN 37172

Melanie Gober  
Executive Director  
Lawyers Association for Women Marion  
Griffin Chapter  
P.O. Box 190583  
Nashville, TN 37219

Kristin Green  
President, Bedford County Bar Association  
300 E. Lane Street  
P.O. Box 461  
Shelbyville, TN 37162-0461

James Haywood  
President, Haywood County Bar  
Association  
Haywood Law, PLLC  
50 Boyd Avenue, P.O. Box 438  
Brownsville, TN 38012-0438

Martin Holmes  
Federal Bar Association  
Nashville Chapter President  
Dickinson Wright, PLLC  
424 Church Street, Suite 1401  
Nashville, TN 37219

Jane Jarvis  
Executive Director  
Tennessee Lawyers Association for Women  
West Tennessee Legal Services  
210 W. Main Street  
Jackson, TN 38301

Kevin Keeton  
President, Hawkins County Bar Association  
Point & Keeton, PC  
115 E. Washington Street  
Rogersville, TN 37857-3317

Suzanne Keith  
Executive Director  
Tennessee Association for Justice  
1903 Division Street  
Nashville, TN 37203

Katherine Kroeger  
President, Anderson County Bar  
Association  
7th Jud. Dist. Office of the Public Defender  
127 N. Main Street  
Clinton, TN 37716-3607

William Lawson  
President, Unicoi County Bar Association  
112 Gay Street, Suite A  
P.O. Box 16  
Erwin, TN 37650-0016

Keating Lowery  
President, Lawyers Association for Women  
Lawrence & Russell  
5178 Wheelis Drive  
Memphis, TN 38117

Matt Maddox  
President, Carroll County Bar Association  
Attorney at Law  
P.O. Box 827  
Huntingdon, TN 38344

Lee McVey  
President, Kingsport Bar Association  
The McVey Law Firm  
108 E. Main St., Suite 208  
Kingsport, TN 37660

John Miles  
President, Obion County Bar Association  
P.O. Box 8  
Union City, TN 38281

Mary Morris  
Federal Bar Association,  
Memphis/Mid-South Chapter President  
Burch, Porter & Johnson, PLLC  
130 North Court Avenue  
Memphis, TN 38103

Ashley Ownby  
President, Bradley County Bar Association  
P.O. Box 176  
Cleveland, TN 37364-0176

Beau Pemberton  
President, Weakley County Bar Association  
Law Office Of James H. Bradberry  
109 North Poplar Street  
P.O. Box 789  
Dresden, TN 38225-0789

Sarah Kennedy  
President, McMinn-Meigs County Bar  
Association  
Jerry N. Estes Law Offices, PLLC  
296 W. Madison Avenue  
Athens, TN 37303

Ed Lancaster  
Tennessee CLE Commission Chair  
TFIC  
P.O. Box 998  
Columbia, TN 38402

Peter Letsou  
Dean  
University of Memphis Cecil C.  
Humphreys School of Law  
1 North Front Street  
Memphis, TN 38103

Trevor Lynch  
Rutherford-Cannon County Bar  
Association  
320 W. Main Street, Suite 100  
Woodbury, TN 37190

Ian McCabe  
President, Loudon County Bar Association  
Law Office of Ian McCABe  
200 Prosperity Drive, Suite 113  
Knoxville, TN 37923

Brandon Meredith  
President, Sumner County Bar Association  
Phillips & Ingram  
117 E. Main Street  
Gallatin, TN 37066

Denny Mitchell  
President, White County Bar Association  
Mitchell Law Office  
112 South Main Street  
Sparta, TN 38583

David Myers  
President, Union County Bar Association  
105 Monroe Street  
P.O. Box 13  
Maynardville, TN 37807-0013

Tommy Parker  
President, Memphis Bar Association  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz PC  
165 Madison Avenue, Suite 2000  
Memphis, TN 38103

Creed McGinley  
Tennessee Bar Foundation Chair  
P.O. Box 548  
Savannah, TN 38372

Wayne Kramer  
President-Elect, Knoxville Bar Association  
Kramer Rayson LLP  
P.O. Box 629  
Knoxville, TN 37901

Edward Lanquist  
President, Nashville Bar Association  
Patterson PC  
1600 Division St., Suite 500  
Nashville, TN 37203

William Locke  
President, Warren County Bar Association  
General Sessions Judge  
Warren County Courthouse  
P.O. Box 228  
Mcminnville, TN 37111-0228

Monica Mackie  
Executive Director  
Nashville Bar Association  
150 4th Avenue N., Suite 1050  
Nashville, TN 37219

Judy McKissack  
Director  
Tennessee Commission on Continuing  
Legal Education  
221 Fourth Avenue North, Suite 300  
Nashville, TN 37219

Donna Mikel  
Federal Bar Association  
Chattanooga Chapter President  
Burnette, Dobson & Pinchak  
713 Cherry Street  
Chattanooga, TN 37402

Darren Mitchell  
President, Campbell County Bar  
Association  
P.O. Box 375  
Jacksboro, TN 37757

Lynn Newcomb  
President, Cheatham County Bar  
Association  
Balthrop, Perry, Noe, Newcomb & Morgan  
102 Frey Street  
Ashland City, TN 37015

Jon Peeler  
President, Tennessee Association for  
Justice  
401 Church Street  
L&C Tower, 29th Floor  
Nashville, TN 37219

Samuel Perkins  
President, Tennessee Association of  
Criminal Defense Lawyers  
Perkins, Jones, & Associates  
80 Monroe, Suite 450  
Memphis, TN 38103-2520

Lisa Perlen  
Executive Director  
Tennessee Board of Law Examiners  
401 Church Street  
Nashville, TN 37219

Mario Ramos  
President, Tennessee Association of  
Spanish Speaking Attorneys  
Mario Ramos PLLC  
611 Commerce Street, Suite 3119  
Nashville, TN 37203

Sunny Sandos  
President, Washington County Bar Assoc.  
West & Rose  
537 East Center Street  
P.O. Box 1404  
Kingsport, TN 37660-4869

Jim Smith  
President, Roane County Bar Association  
305 W. Rockwood Street  
Rockwood, TN 37854

Joycelyn Stevenson  
President-Elect, Nashville Bar Association  
Littler Mendelson PC  
333 Commerce Street, #1450  
Nashville, TN 37201

Andrew Taylor  
President, Carter County Bar Association  
211 South Main Street  
Elizabethton, TN 37643-4518

Robert Thomas  
National Bar Association,  
Ballard Taylor Chapter President  
Weinman & Associates  
112 S. Liberty St., P.O. Box 266  
Jackson, TN 38302-0266

James Tucker  
President, Tennessee Defense Lawyers  
Association  
Manier & Herod PC  
150 4th Avenue N., Suite 2200  
Nashville, TN 37219

Derreck Whitson  
President, Cocke County Bar Association  
P.O. Box 1230  
Newport, TN 37822

Marsha Wilson  
Executive Director  
Knoxville Bar Association  
P.O. Box 2027  
Knoxville, TN 37901

Jennifer Porth  
President, 15<sup>th</sup> Judicial District Bar Assoc.  
J. Stephen Brown PC  
224 W. Gay Street  
P.O. Box 792  
Lebanon, TN 37088-0792

Beverly Rayburn  
President, Maury County Bar Association  
14 Public Square  
Columbia, TN 38401

Randall Self  
President, Lincoln County Bar Association  
Randall E. Self, Attorney At Law  
131A Market Street E.  
P.O. Box 501  
Fayetteville, TN 37334-0501

Abby Sparks  
President, Lawyers Association for Women  
Marion Griffin Chapter  
State of Tennessee, Department of Revenue  
500 Deaderick Street  
Nashville, TN 37242-0001

William Stover  
Immediate Past President,  
Tennessee Alliance for Black Lawyers  
500 Church Street, Suite 450  
Nashville, TN 37219-2370

Deborah Taylor Tate  
Administrative Director  
Administrative Offices of the Courts  
201 Fourth Avenue North, Suite 1900  
Nashville, TN 37219

Harriet Thompson  
President, Hardeman County Bar  
Association  
P.O. Box 600  
Bolivar, TN 38008

Tyler Weiss  
President, Monroe County Bar Association  
Worthington & Weiss, P.C.  
409 College Street N., Suite 1  
Madisonville, TN 37354-3103

John Lee Williams  
President, Humphreys County Bar  
Association  
Porch Peeler Williams Thomason  
102 S. Court Square  
Waverly, TN 37185-2113

Melanie Wilson  
Dean  
UT College Of Law  
1505 W. Cumberland Avenue, Room 278  
Knoxville, TN 37996

Ann Pruitt  
Executive Director  
Tennessee Alliance for Legal Services  
1220 Vintage Place  
Nashville, TN 37215

Kathy Rowell  
SETLAW President  
821 Houston Street, Suite 104  
Chattanooga, TN 37403

Christie Sell  
President-Elect, Chattanooga Bar Assoc.  
Hamilton County  
General Session Court Judges  
600 Market Street, 203 Courts Building  
Chattanooga, TN 37402

David Stanifer  
President, Claiborne County Bar  
Association  
Stanifer & Stanifer  
P.O. Box 217  
Tazewell, TN 37879

Stephanie Stuart  
President, Bristol Bar Association  
1990 Highway 394, Suite C  
Blountville, TN 37617

James Taylor  
President, Rhea County Bar Association  
1374 Railroad Street, Suite 400  
Dayton, TN 37321-2211

Shawn Trail  
President, Coffee County Bar Association  
117 S. Spring Street  
Manchester, TN 37355

Mary Whitfield  
Immediate Past President,  
Association for Women Attorneys  
Shea Moskovitz & Mcghee  
530 Oak Court Drive, Suite 355  
Memphis, TN 38117-3733

Matthew Willis  
President, Dyer County Bar Association  
Ashley Ashley & Arnold  
P.O. Box H  
Dyersburg, TN 38025



TENNESSEE BAR  
ASSOCIATION

**PRESIDENT**

Jonathan Steen  
464 North Parkway, Suite A  
Jackson, Tennessee 38305  
(731) 660-2332  
FAX (731) 664-1109  
Email: jsteen@rsrlawfirm.com

**PRESIDENT-ELECT**

Bill Harbison  
150 3rd Avenue South  
Suite 1100  
Nashville, Tennessee 37201  
(615) 742-4200  
FAX (615) 742-4539  
Email: bharbison@sherrardroe.com

**VICE PRESIDENT**

Jason Long  
900 S. Gay Street  
Suite 2102  
Knoxville, Tennessee 37902  
(865) 521-6527  
FAX (865) 637-0540  
Email: jhl@lyblaw.net

**TREASURER**

Sherie Edwards  
P.O. Box 1065  
Brentwood, Tennessee 37024  
(615) 846-8205  
FAX (615) 846-6070  
Email: sheriee@svmic.com

**SECRETARY**

Jason Pannu  
P.O. Box 198615  
Nashville, Tennessee 37219-8615  
(615) 259-1366  
Fax: (615) 259-1389  
Email: jpannu@lewis-thomason.com

**IMMEDIATE PAST PRESIDENT**

Cynthia Richardson Wyrick

**BOARD OF GOVERNORS**

Dan Berexa, Nashville  
Tasha Blakney, Knoxville  
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Sarah Sheppard, Knoxville  
Gary Shockley, Nashville  
Mary Dohner Smith, Nashville  
Chris Varner, Chattanooga  
David Veile, Franklin  
Shelly Wilson, Knoxville

**GENERAL COUNSEL**

Paul Ney, Nashville

**EXECUTIVE DIRECTOR**

Allan F. Ramsaur, Nashville  
Email: aramsaur@tnbar.org

July 23, 2015



The Honorable James Hivner  
Clerk, Tennessee Supreme Court  
Supreme Court Building, Room 100  
401 7<sup>th</sup> Avenue North  
Nashville, TN 37219

IN RE: RULE 30  
RULES OF THE TENNESSEE  
SUPREME COURT  
NO. ADM2015-00451

Dear James:

Attached please find an original and one copy of the Comment of the Tennessee Bar Association in reference to the above matter.

As always, thank you for your cooperation. I remain,

Very truly yours,

Allan F. Ramsaur  
Executive Director

cc: Bill Harbison, President, Tennessee Bar Association  
Lucian Pera, Vice President, Tennessee Bar Association  
John Williams, Chair, Tennessee Bar Association Communication  
Law Section  
Paul Ney, General Counsel  
Service List

Tennessee Bar Center  
221 Fourth Avenue North, Suite 400  
Nashville, Tennessee 37219-2198  
(615) 383-7421 • (800) 899-6993  
FAX (615) 297-8058  
www.tba.org

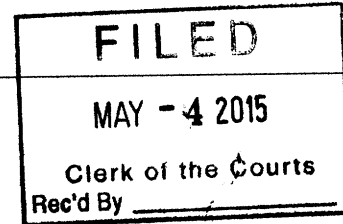
JACK MCELROY  
EDITOR  
(865) 342-6300

2332 NEWS SENTINEL DRIVE  
KNOXVILLE, TENNESSEE 37921  
FAX: (865) 342-6400

KNOXVILLE, TN 37950-9038  
E-MAIL: mcelroyj@knews.com



ADM2015-00451



April 29, 2015

Tennessee Supreme Court  
Regarding: Proposed Rule 30 changes

Dear Justices:

I am the editor of the Knoxville News Sentinel, and in that role I interact almost daily with reporters and photographers covering the judicial process in Knox County.

I want to begin by expressing my appreciation of the Court's ongoing willingness to work with Tennessee's news media to find ways to make courtrooms as accessible to the public as possible without sacrificing order and decorum or the quality of justice. I believe that Rule 30 has worked well in providing a framework for allowing cameras in courtrooms, and I recognize that the changes to Rule 30 are being proposed in the same spirit of transparency and openness.

I am concerned, however, that the proposed changes, though well-intended, actually will result in a substantial step backward in public access to court proceedings.

Right now, the judges in Knox County allow reporters virtually unrestricted use of digital phones and tablets as reporting tools, provided, of course, that they are not used as cameras and are handled discreetly and silently so that there is no disruption to court proceedings. This has allowed reporters to greatly broaden their delivery of courtroom news to the citizenry. As you are aware, the City-County Building in Knoxville is the home of General Sessions, Circuit, Chancery and Criminal courtrooms. On a routine day, our reporters are in and out of several courtrooms covering multiple proceedings. Their coverage plans can change abruptly based on news developments. In some cases, the proceedings being covered have not even been published on the day's dockets as judges and attorneys juggle schedules. In each instance, the reporters use their digital devices to deliver news updates to our newsroom or to the public directly via social networks or other digital platforms.

Rule 30 requests are not being required in this work environment because the digital devices are not being employed as cameras or recording devices. Under the proposed rule change, however, requests would have to be submitted. This would seriously hamper the flexibility of reporters to cover a variety of proceedings, even if the 48-hour deadline routinely were waived. Attorneys who simply wanted to limit publicity would object to Rule 30 requests, especially last minute ones, and judges might be hesitant to delay proceedings to schedule Rule 30 hearings.

Because Rule 30 was developed with cameras and photographic images in mind, the proposed changes result in some illogical anomalies. For instance, definition of "coverage" would be expanded to include posting on a website or on a social media platform using an electronic device.

But the rule would continue to prohibit “coverage” of jury selection. This would mean that a reporter using a traditional pen and notebook could take notes on voir dire then leave the courtroom and post that information on a website or social media site. But that same reporter would be prohibited from posting the same information from an electronic device in the courtroom even when the device was allowed under a Rule 30 request.

When Rule 30 originally was being debated, a major concern was order and decorum in courtrooms. All agreed that cameras, by the nature of their use, injected some level of distraction into proceedings, so much of the focus was on how these distractions could be mitigated. Quiet cameras and limited positioning were responses to this concern. The proposed changes to Rule 30 continue to impose restrictions on a journalistic tool, now the “electronic device.” But unlike cameras, electronic devices have an array of uses. Some uses would create distractions in a courtroom. Others – including posting and messaging from within the courtroom -- are no more distracting than using a pen and notebook.

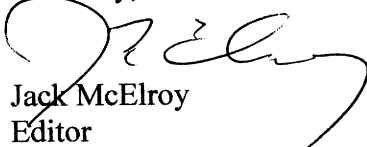
Another concern of the original Rule 30 was the content produced. At times, attorneys have argued that photos or video might prejudice a jury pool, invade the privacy of a witness or otherwise harm the judicial process because of the very nature of the content produced. Such cases have involved a balancing of First and Fourth Amendments rights and ideally have warranted full-blown hearings. But an electronic device, when not used as a camera or recorder, produces no special content. The words that a reporter places in a smartphone or digital tablet are indistinguishable from the words he or she places on paper in a notebook.

For these reasons, the proposed changes to Rule 30 represent a fundamental shift in the regulation of courtroom journalism. Now the delivery and dissemination of information is at issue. Reporters would be able to deliver the same content outside the courtroom using tools and methods that would be banned inside the courtroom. There would be no effect on courtroom decorum nor difference in the content viewed by the public. The only effect would be to slow down the work of the journalists. Sadly, this is being proposed at a time when the number of professional reporters covering the routine, day-to-day proceedings in local courtrooms is shrinking because of the diminished resources of traditional media.

Modern digital tools have allowed reporters to leverage their efforts to provide as much coverage as possible to citizens who increasingly are getting their news and information through non-traditional channels. Making that harder, without any offsetting gain in courtroom decorum or the judicial process, does not serve the interest of the justice system nor of the citizenry.

Again, I thank the Court for its attention to this issue and its consideration of the concerns expressed above.

Sincerely,



Jack McElroy  
Editor

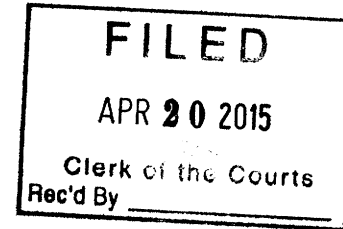
John Avery Emison, Ph.D.  
365 East Church Street  
Alamo, Tennessee 38001

E-mail: john.a.emison@hotmail.com

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April 15, 2015

James Hivner, Clerk  
RE: Rule 30  
100 Supreme Court Building  
401 7<sup>th</sup> Avenue North  
Nashville, Tennessee 37219-1407



RE: No. ADMIN2015-00451

Dear Mr. Hivner:

As a public citizen and investigative author, I submit the following comments on the proposed change to Rule 30.

The present definition of “coverage” is rationally based in that it includes the various types of equipment that can be distractive to court participants, or may even appear to interfere with a neutral setting.

There is no rational basis to change this definition to include posting messages to social media, text messaging, etc., with a smart phone (“electronic device”) or similar product. Typing a message on a smart phone, Blackberry, iPad or similar device is no more or less discrete than writing notes on a paper tablet. The real reason for change is to isolate court proceedings from real-time reporting to the outside world. Before the Court adopts this change it should explain to the public why it believes this is important, and to provide examples of how such reporting has damaged the cause of justice in the past. I don’t believe it has, and I don’t believe the Court has any basis other than convenience and the desire to operate in as much anonymity as possible. Furthermore, I do not believe the proposed change comports to the constitutional mandate of openness in Article I, Sec. 17.

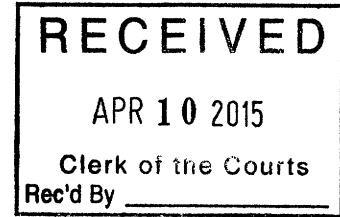
I urge the Court not to adopt the proposed changes to Rule 30, and if you do you should submit Rule 30 to the General Assembly for ratification.

Kindest regards,

John Avery Emison

**From:** "Ben Cunningham"  
**To:** <lisa.marsh@tncourts.gov>  
**Date:** 4/10/2015 1:26 PM  
**Subject:** TN Courts: Submit Comment on Proposed Rules

ADM2015-00451



Submitted on Friday, April 10, 2015 - 1:25pm  
Submitted by anonymous user:  
Submitted values are:

Your Name:  
Your Address  
Your email address  
Your Position or Organization: President, The Nashville Tea Party, Inc. a TN Non-profit  
Rule Change: Supreme Court Rule 21, Sections 1.01 and 10 and Supreme Court Rule 8, RPC 7.4(d)  
Docket number: unknown  
Your public comments:  
Commenting on Rule 30, Media Guidelines (there was no option in the drop down menu for rule 30)

The rules are far too restrictive on reporters. Reporters should not be required to get permission from a judge for cell phones and computers. These are the modern day pen and pad and they should only be excluded when the press is excluded. Ben Cunningham

The results of this submission may be viewed at:  
<http://www.tncourts.gov/node/602760/submission/11551>



