

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

**1. IN RE:AMENDMENTS TO TENNESSEE RULES OF CRIMINAL
PROCEDURE**

FILED DECEMBER 10, 2003

ORDER

The Court adopts the attached amendments effective July 1, 2004, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 44 RIGHT TO AND ASSIGNMENT OF COUNSEL

RULE 45 TIME

RULE 49.1 FACSIMILE FILING OF PAPERS.

FOR THE COURT:

FRANK F. DROWOTA, III,

CHIEF JUSTICE

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 44

RIGHT TO AND ASSIGNMENT OF COUNSEL

(c) Joint Representation.– [In the first sentence, change the reference to “Rule 8(b)” to “Rule 8(c).”]

Advisory Commission Comment

A cross-reference in paragraph (c) was corrected where it speaks of joinder of defendants. That subject is contained in Rule 8(c), not 8(b); the latter deals with joinder of offenses rather than defendants.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 45

TIME

(a) Computation.--

[Change the second sentence to read:]

The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other

conditions have made the office of the court clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

Advisory Commission Comment

The second sentence of Rule 45 is altered to adopt federal language covering snow days and the like which make a clerk's office "inaccessible" for filing. Earlier language required that the office be "closed."

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 49.1

FACSIMILE FILING OF PAPERS

(a) Definitions.—

(1) "Facsimile filing" means the facsimile transmission of an original document which is received in the original document's entirety by the trial court clerk and filed by the clerk.

(2) "Facsimile machine" means a device capable of sending a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union in regular resolution. Any facsimile machine used to send documents to a court must send at an initial transmission speed of no less than 4800 baud and be able to generate a transmission record.

(3) "Facsimile transmission" is the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

(4) "Sender" is the person or entity sending the facsimile transmission to the court.

(5) "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission.

(b) Filing procedures.—

(1) The trial court clerk shall accept papers for filing by facsimile transmission as provided in this rule. The trial court clerk shall maintain a dedicated telephone line for the clerk's facsimile machine.

(2) Any document filed by facsimile transmission shall be accompanied by the uniform cover sheet set forth in the comment to this rule stating: the caption of the case; the trial court docket number; the title of the transmitted document; the number of pages of the facsimile transmission (including the cover sheet); the sender's name, address, voice telephone number, and facsimile telephone number; and the date of the facsimile transmission. The cover sheet shall also contain clear and concise instructions as to the filing of the transmitted document.

(3) The filing of the original document shall not be required after facsimile filing. The sender shall

retain the original document in the sender's possession or control during the pendency of the action and shall produce such document upon request by the court or any party to the action. Upon failure to produce such document, the court may strike the document filed by facsimile transmission.

(4) The following documents shall not be filed in the trial court by facsimile transmission:

(a) An appeal from a lower court to a circuit/criminal court.

(b) A notice of appeal to an appellate court.

(c) The affidavit of complaint for an arrest warrant or summons (see Tenn. R. Crim. Proc. 4).

(d) Search warrants, affidavits, returns, and inventories (see Tenn. R. Crim. Proc. 41).

(e) A confidential document that the Court previously has ordered to be filed under seal.

(f) Indictments, presentments, and informations.

(5) No facsimile filing shall exceed ten (10) pages in length, including the cover sheet, unless authorized by the court; absent such authorization, a facsimile transmission exceeding ten (10) pages, including the cover sheet, shall not be filed by the clerk. A facsimile filing may not be split into multiple facsimile transmissions to avoid this page limitation. All documents filed by facsimile transmission shall comply with all applicable rules of court, including, without limitation, rules governing the content and form of pleadings and other papers; the signing of pleadings, motions and other papers; and the service of all papers.

(6) The original document sent by facsimile transmission shall be on letter-sized paper (8 ½ by 11 inches). Originals on larger-sized paper may be reduced prior to facsimile transmission if the reduction to 8½ by 11 inch paper renders a legible and complete copy of the original.

(7) The clerk is not required to notify the sender by return facsimile transmission or voice telephone call that the facsimile document has been received by the clerk or that the facsimile document has not been received in its entirety. This provision shall not relieve the clerk of any notice requirements imposed by law or by the court.

(c) Effect of facsimile filing.—

(1) A facsimile transmission received by the clerk after 4:30 p.m. but before midnight, clerk's local time, on a day the clerk's office is open for filing shall be deemed filed as of that business day. A facsimile transmission received after midnight but before 8:00 a.m., clerk's local time, on a business day, or a facsimile transmission received by the clerk on a Saturday, Sunday, legal holiday, or other day on which the clerk's office for filing is closed, shall be deemed filed on the preceding business day. Upon receiving a facsimile transmission in its entirety, the clerk shall note the filing date on the facsimile filing in the same manner as with original pleadings or other documents filed by mail or in person. For purposes of this provision, "received by the clerk" means the date and time the facsimile transmission is received by the clerk as indicated by the date and time printed on the facsimile transmission by the clerk's facsimile machine.

(2) A signature reproduced by facsimile transmission shall be treated as an original signature.

(3) The sender bears the risk of using facsimile transmission to convey a document to a court for filing, including, without limitation, malfunction of facsimile equipment, whether the sender's or the clerk's equipment; electrical power outages; incorrectly dialed telephone numbers; or receipt of a busy signal from the clerk's facsimile telephone number. In the event that a facsimile transmission to the clerk is unsuccessful, the sender may file the document by mail or in person; in such cases, the filing date shall be determined as provided in Rules 45 and 49, Tenn. R. Crim. Proc. However, if a facsimile transmission is not received in its entirety by the clerk because of a transmission error, the sender may move acceptance nunc pro tunc by filing a written motion with the court. The motion shall be accompanied by the sender's transmission record, the original document that was the subject of the attempted transmission, and an affidavit of the sender detailing the facts concerning the attempted transmission. The court, in its discretion, may order filing of the original document nunc pro tunc.

(d) Facsimile service charge.—

The sender of the facsimile transmission shall pay to the trial court clerk a service charge for each facsimile filing in the amount of five dollars (\$5.00) plus one dollar (\$1.00) per page of the facsimile filing (including the cover sheet). Payment of the service charge, accompanied by a copy of the facsimile filing cover sheet, shall be received by the trial court clerk not later than ten (10) calendar days after the facsimile filing. The facsimile service charge shall be paid by the sender as provided in this rule and shall not be taxed as court costs, subject to the following exception. If the sender is either a party who has been allowed to proceed on a pauper's oath or an attorney for such a party, timely payment of the facsimile service charge under this rule is suspended, and the charges shall be taxed as court costs.

Advisory Commission Comment

Rule 49.1 is adopted to provide for the filing of papers in the trial court by facsimile transmission. The rule lists certain documents which cannot be filed by this method. Moreover, the rule covers only filing, not service, of papers. Service is governed by Rule 49.

Image Not Available

TENNESSEE COURTS **UNIFORM FACSIMILE FILING COVER SHEET**

TO (COURT CLERK): _____

WITH (COURT): _____

CLERK'S FAX NUMBER: _____

CASE NAME: _____

DOCKET NUMBER: _____

TITLE OF DOCUMENT: _____

FROM (SENDER): _____

SENDER'S ADDRESS: _____

SENDER'S VOICE TELEPHONE NUMBER: _____

SENDER'S FAX TELEPHONE NUMBER: _____

DATE: _____ TOTAL PAGES, INCLUDING COVER PAGE: _____

FILING INSTRUCTIONS/COMMENTS (attach additional sheet if necessary):

Unless authorized by the Court, a facsimile transmission exceeding ten (10) pages,
including the cover page, shall not be filed by the clerk.