

IN THE SUPREME COURT OF TENNESSEE

FILED

November 10, 1999

Cecil Crowson, Jr.
Appellate Court Clerk

IN RE: AMENDMENT TO
SUPREME COURT RULE 4

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ORDER

Supreme Court Rule 4 is hereby amended by deleting the rule in its entirety and replacing it with the following:

Rule 4 - Publication of Opinions - Not for Citation Designation - Precedential Value and Citation of Unpublished Opinions.

(A)(1) As used in this Rule, "publication" means publication in the official reporter (Southwestern Reporter 2d).

(2) Unless explicitly designated "Not For Publication," all opinions of the Tennessee Supreme Court shall be published in the official reporter. Concurring and dissenting opinions shall be published along with the majority opinion.

(3) Opinions of the Special Workers' Compensation Appeals Panels shall not be published unless publication is ordered by a majority of the Supreme Court.

(4) The Clerk of this Court will promptly file opinions of this Court. A copy of the opinions shall be provided to the Attorney General and Reporter upon filing.

(B) No opinion of the Court of Appeals or Court of Criminal Appeals shall be published in the official reporter until after the time for filing an application for permission to appeal has expired.

(C) If an application for permission to appeal is filed and granted, the opinion of the intermediate appellate court shall not be published in the official reporter, unless otherwise directed by the Tennessee Supreme Court.

(D) If an application for permission to appeal is filed and denied with the recommendation that the intermediate appellate court opinion be published, the author of the intermediate appellate court opinion shall ensure that the opinion is published in the official reporter.

(E) If an application for permission to appeal is filed and denied, the opinion of the intermediate appellate court may be published in the official reporter in accordance with the rules of the intermediate appellate court if the opinion meets one or more of the following standards of publication:

- (i) the opinion establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a set of facts significantly different from those stated in other published opinions;
- (ii) the opinion involves a legal issue of continuing public interest;
- (iii) the opinion criticizes, with reasons given, an existing rule of law;
- (iv) the opinion resolves an apparent conflict of authority, whether or not the earlier opinion or opinions are reported;
- (v) the opinion updates, clarifies or distinguishes a principle of law; or
- (vi) the opinion makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law. See Court of Appeals Rule 11(b) and Court of Criminal Appeals Rule 19.1(a).

(F)(1) If an application for permission to appeal is hereafter denied by this Court with a “Not for Citation” designation, the opinion of the intermediate appellate court has no precedential value.

(2) An opinion so designated shall not be published in any official reporter nor cited by any judge in any trial or appellate court decision, or by any litigant in any brief, or other material presented to any court, except when the opinion is the basis for a claim of res judicata, collateral estoppel, law of the case, or to establish

a split of authority, or when the opinion is relevant to a criminal, post-conviction or habeas corpus action involving the same defendant.

(3) From and after the effective date of this Rule, the precedential and citation value applicable to intermediate appellate court decisions designated “Not for Citation,” shall also apply to intermediate appellate court decisions which have previously been designated, “Denied, Concurring in Results Only” (DCRO), or “Denied, Not for Publication,” (DNP).

(G) If no application for permission to appeal is filed, or if an application is filed but dismissed as untimely, publication of the intermediate appellate court opinion shall proceed in accordance with either Court of Appeals Rule 11 or Court of Criminal Appeals Rule 19.

(H)(1) An unpublished opinion shall be considered controlling authority between the parties to the case when relevant under the doctrines of the law of the case, res judicata, collateral estoppel, or in a criminal, post-conviction, or habeas corpus action involving the same defendant. Unless designated “Not For Citation,” “DCRO” or “DNP” pursuant to subsection (F) of this Rule, unpublished opinions for all other purposes shall be considered persuasive authority. Unpublished opinions of the Special Workers’ Compensation Appeals Panel shall likewise be considered persuasive authority.

(2) Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.

(I)(1) A copy of any unpublished opinion cited shall be furnished to the court and all parties by attaching it to the document in which it is cited.

(2) The title page of the copies and any citation to the unpublished decision shall

contain a notation indicating whether or not an application for permission to appeal has been filed and, if filed, the date and disposition of the application. Where appropriate, the notation shall indicate that an application has been filed and is currently pending.

It is so ORDERED this the 1st day of November, 1999.

FOR THE COURT:

Chief Justice E. Riley Anderson