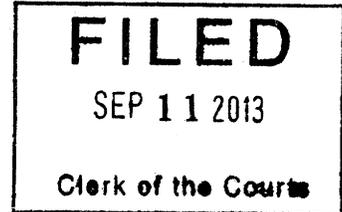


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

IN RE: AMENDMENTS TO THE TENNESSEE RULES  
OF PROCEDURE & EVIDENCE

\_\_\_\_\_  
No. ADM2013-02056  
\_\_\_\_\_



**ORDER**

The Advisory Commission on the Rules of Practice & Procedure annually presents recommendations to the Court to amend the Tennessee Rules of Appellate, Civil, Criminal, and Juvenile Procedure and the Tennessee Rules of Evidence. In August 2013, the Advisory Commission completed its 2012-2013 term and transmitted its recommendations to the Court. After considering the amendments recommended by the Commission, the Court hereby publishes for public comment the proposed amendments set out in the Appendix to this order.

The Court hereby solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is Wednesday, November 27, 2013. Written comments should be addressed to:

Mike Catalano, Clerk  
Re: 2014 Rules Package  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, the order and Appendix shall be posted on the Tennessee Supreme Court's website.

PER CURIAM

**APPENDIX**

***PROPOSED AMENDMENTS  
PUBLISHED FOR PUBLIC COMMENT***

**[New text is indicated by underlining, and deleted text is indicated by overstriking.]**

1 TENNESSEE RULES OF APPELLATE PROCEDURE

2 RULE 2

3 SUSPENSION OF RULES

4 [Amend the second paragraph of the original Advisory Commission Comment as indicated below  
5 (new text underlined) and by adding the 2014 Comment below; the text of the Rule is unchanged:]

6 For good cause, including the interest of expediting decision upon any matter, the Supreme  
7 Court, Court of Appeals, or Court of Criminal Appeals may suspend the requirements or provisions  
8 of any of these rules in a particular case on motion of a party or on its motion and may order  
9 proceedings in accordance with its discretion, except that this rule shall not permit the extension of  
10 time for filing a notice of appeal prescribed in Rule 4, an application for permission to appeal to the  
11 Supreme Court from the denial of an application for interlocutory appeal by an intermediate  
12 appellate court prescribed in Rule 9(c), an application for permission to appeal to the Supreme Court  
13 from an intermediate appellate court's denial of an extraordinary appeal prescribed in Rule 10(b),  
14 an application for permission to appeal prescribed in Rule 11, or a petition for review prescribed in  
15 Rule 12.

16 *Advisory Commission Comments*

17 The primary purpose of this rule is to make clear the power of the appellate courts to suspend  
18 the requirements or provisions of any of these rules in a particular case. The courts are thus  
19 empowered to relieve litigants of the consequences of noncompliance with the rules in those  
20 circumstances in which it is appropriate to do so. The need for this power is the result of two  
21 principal considerations. These rules, as do most rules of law, necessarily speak in somewhat  
22 general terms. Otherwise, the rules would be overburdened with qualifications, exceptions,  
23 specifications, and provisos. In addition, no person or group of persons can possibly foresee all the  
24 situations life may churn up. This rule, therefore, permits the necessary individualization of the law

25 in particular cases, and provides the source of authority for the courts to formulate law in situations  
26 not currently foreseeable.

27 The exceptions to this rule prohibit the appellate courts from extending the time for taking  
28 an appeal as of right, applying for permission to appeal from an intermediate appellate court to the  
29 supreme court, and for petitioning for review in those rare cases in which the Court of Appeals  
30 directly reviews orders of an administrative agency. Those times are specified in Rules 4, 11, and  
31 12. Since filing a notice of appeal is an essential step necessary to a valid appeal of right, this step  
32 should not generally be waivable inasmuch as the rights of parties remain uncertain during the time  
33 available for filing a notice of appeal. Similar considerations prompted the other two exceptions.  
34 But see Advisory Commission Comment [2014] to this rule, discussing limited waiver provisions  
35 set out in Rules 4(a) and 11(b).

36 The rule envisions that the appellate court may act on its own motion or on motion of a party.  
37 A motion by a party should be made in the manner provided in Rule 22. If the appellate court does  
38 suspend the requirements or provisions of these rules, proceedings thereafter will be had in  
39 accordance with the discretion and direction of the court.

40 The final clause prohibiting extensions in no way affects computation of time under T.R.A.P.  
41 21. For example, if the thirtieth day to file a notice of appeal falls on a holiday, the notice could be  
42 filed on the next business day.

43 *Advisory Commission Comments [2003]*

44 The rule was amended to clarify that the filing deadlines to the Supreme Court under  
45 T.R.A.P. 9(c) and 10 are jurisdictional, like those in T.R.A.P. 4, 11 and 12.

46 *Advisory Commission Comment [2014]*

47 Rule 2 bars an appellate court from extending the time for filing a notice of appeal pursuant  
48 to Rule 4(a) and from extending the time for filing one of the listed applications for permission to  
49 appeal. Rules 4(a) and 11(b), however, grant the Court of Criminal Appeals and the Supreme Court,  
50 respectively, the discretionary authority to waive the pertinent time period if a notice of appeal or  
51 an application for permission to appeal pursuant to Tenn. R. App. P. 11 is not timely filed in a  
52 criminal case. (See Rule 11(b) for two types of criminal appeals in which the waiver provision in  
53 that rule does not apply.) The distinction between a prohibited extension under Rule 2 and a  
54 permissible waiver under Rules 4(a) and 11(b) is that an extension is prospective (i.e., granting a  
55 motion for an extension of time to file), while a waiver is retrospective (i.e., waiving an untimely  
56 filing in a criminal appeal, in the court's discretion and "in the interest of justice," depending on the  
57 reason(s) for the untimely filing).

58 TENNESSEE RULES OF APPELLATE PROCEDURE

59 RULE 3

60 APPEAL AS OF RIGHT: AVAILABILITY; METHOD OF INITIATION

61 [Amend the third paragraph of “Subdivision (e)” in the original Advisory Commission Comment  
62 as indicated below; the text of the rule and the text of the other Advisory Commission Comments  
63 are unchanged.]

64 (a) \* \* \* \*

65 *Advisory Commission Comment*

66 **Subdivision (a).** \* \* \* \*

67 **Subdivision (e).** The intent of this subdivision is to provide a uniform and simplified  
68 method of taking an appeal as of right. This subdivision combined with Rules 4 and 5 require that  
69 a notice of appeal be filed with the clerk of the trial court within the time prescribed for taking an  
70 appeal and that a copy of the notice of appeal be served on all parties. The form and content of the  
71 notice of appeal are set out in official form 1, and Rule 48 specifically provides that the use of this  
72 form is sufficient under these rules.

73 Rule 36 provides that relief need not be granted to a party who fails to take whatever action  
74 is reasonably available to prevent or nullify the harmful effect of error. Failure to present an issue  
75 to the trial court, therefore, will typically not merit appellate relief. In addition, under Rule 13(c) the  
76 appellate court is generally limited in its review to those facts set forth in the record. Thus matters  
77 that can only be made a part of the record by a new trial motion must be so included in order to gain  
78 appellate review. Jury misconduct provides one example.

79 Under Rule 16, two or more persons may proceed on appeal jointly. Thus it is entirely  
80 proper for parties to file a joint notice of appeal; however, a joint notice of appeal must comply with  
81 subparagraph subdivision (f) of this rule.

82 **Subdivision (f).** \* \* \* \*

83 *Advisory Commission Comment [2014]*

84 The third paragraph of “Subdivision (e)” in the original Advisory Commission was amended  
85 by substituting the word “subdivision” for the word “subparagraph.” The text of the rule and the  
86 text of the other Advisory Commission Comments were not changed.

87 TENNESSEE RULES OF APPELLATE PROCEDURE

88 RULE 4

89 APPEAL AS OF RIGHT: TIME FOR FILING NOTICE OF APPEAL

90 [Amend Tenn. R. App. P. 4(e) as indicated below:]

91 **(a) Generally.** — \* \* \* \*

92 **(e) Effect of Specified Timely Motions on Trial Court’s Jurisdiction.** — The trial court  
93 retains jurisdiction over the case pending the court’s ruling on any timely filed motion specified in  
94 ~~subparagraph~~ subdivision (b) or (c) of this rule. If a motion specified in either ~~subparagraph~~  
95 subdivision (b) or (c) is filed within the time permitted by the applicable rule referred to in that  
96 ~~subparagraph~~ subdivision, the filing of a notice of appeal prior to the filing of the motion, or the  
97 filing of a notice of appeal prior to the trial court’s ruling on an earlier filed motion, does not deprive  
98 the trial court of jurisdiction to rule upon the motion. A notice of appeal filed prior to the trial  
99 court’s ruling on a timely specified motion shall be deemed to be premature and shall be treated as  
100 filed after the entry of the order disposing of the motion and on the day thereof. If an appellant  
101 named in a premature notice of appeal decides to terminate the appeal as a result of the trial court’s  
102 disposition of a motion listed in ~~subparagraph~~ subdivision (b) or (c) of this rule, the appellant shall  
103 file in the appellate court a motion to dismiss the appeal pursuant to Rule 15.

104 *Advisory Commission Comment [2014]*

105 Subdivision (e) was amended by adding the following text to the second sentence: “or the  
106 filing of a notice of appeal prior to the trial court’s ruling on an earlier filed motion[.]” That text  
107 was added to clarify that the filing of a notice of appeal prior to the trial court’s ruling on a timely

108 motion specified in subdivision (b) or (c) does not affect the trial court's ability to rule on the  
109 pending motion, so long as the motion was timely filed before or after the filing of the notice of  
110 appeal.

111 Subdivision (e) also was amended by substituting (in four places) the word "subdivision"  
112 for the word "subparagraph."

*proposed*

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TENNESSEE RULES OF APPELLATE PROCEDURE

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RULE 6

115

SECURITY FOR COSTS ON APPEAL

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[Amend the 2002 Advisory Commission Comment as indicated below; the text of the rule is unchanged.]

118

(a) \* \* \* \*

*proposed*

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*Advisory Commission Comment [2002]*

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New ~~subparagraph~~ subdivision (b) states the procedure for payment of all litigation taxes applicable to the appeal. New ~~subparagraph~~ subdivision (c) conforms to a similar provision in Appellate Rule 15(a).

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*Advisory Commission Comment [2014]*

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The 2002 Advisory Commission Comment was amended by substituting (in two places) the word “subdivision” for the word “subparagraph.” The text of the rule and the text of the other Advisory Commission Comments were not changed.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 9

INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT

[Amend Tenn. R. App. P. 9(d) by adding the underlined text below:]

(a) \* \* \* \*

(d) Content of Application; Answer.

The application shall contain: (1) a statement of the questions presented for review; (2) a statement of the facts necessary to an understanding of why an appeal by permission lies; and (3) a statement of the reasons supporting an immediate appeal. A statement of reasons is sufficient if it simply incorporates by reference the trial court's reasons for its opinion that an appeal lies. The application shall be accompanied by copies of: (1) the order appealed from, (2) the trial court's statement of reasons, and (3) the other parts of the record necessary for determination of the application for permission to appeal. Within 10 days after filing of the application, any other party may file an answer in opposition, with copies in the number required for the application, together with any additional parts of the record such party desires to have considered by the appellate court. The answer shall be served on all other parties in the manner provided in Rule 20 for the service of papers. If available, the color of the cover of the application shall be blue, and the cover of the answer shall be red. The color of the cover of an answer filed by an amicus curiae shall be green. The application and answer shall be submitted without oral argument unless otherwise ordered.

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*Advisory Commission Comment [2014]*

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Subdivision (d) was amended to specify the color of the covers of applications and answers filed pursuant to Rule 9.

*proposed*

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TENNESSEE RULES OF APPELLATE PROCEDURE

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RULE 10

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EXTRAORDINARY APPEAL BY PERMISSION ON  
ORIGINAL APPLICATION IN THE APPELLATE COURT

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155 [Amend Tenn. R. App. P. 10 by adding the new subdivision (d) below:]

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(d) If available, the color of the cover of the application shall be blue. If the appellate court

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orders that an answer be filed, the cover of the answer shall be red, except that the cover of an

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answer filed by an amicus curiae shall be green.

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*Advisory Commission Comment [2014]*

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Subdivision (d) was added to the rule to specify the color of the covers of applications and

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answers (if any) filed pursuant to Rule 10.

162 TENNESSEE RULES OF APPELLATE PROCEDURE

163 RULE 11

164 APPEAL BY PERMISSION FROM APPELLATE COURT TO SUPREME COURT

165 [Amend Tenn. R. App. P. 11(c) by adding the underlined text and deleting the overstricken text  
166 below:]

167 (a) \* \* \* \*

168 (c) Number of Copies; ~~Service; Color of Covers.~~ *proposed* — The original and ~~six~~ five copies of the  
169 application shall be filed. The application shall be served on all other parties in the manner provided  
170 in Rule 20 for the service of papers. If available, the color of the cover of the application shall be  
171 blue; the cover of an answer shall be red, except that the cover of an answer filed by an amicus  
172 curiae shall be green.

173 \* \* \* \*

174 *Advisory Commission Comment [2014]*

175 Subdivision (d) was amended to reduce from six to five the number of copies to be filed with  
176 the original application for permission to appeal. Subdivision (d) also was amended to specify the  
177 color of the covers of applications and answers filed pursuant to Rule 11.

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TENNESSEE RULES OF APPELLATE PROCEDURE  
RULE 24  
CONTENT AND PREPARATION OF THE RECORD

[Amend Tenn. R. App. P. 24(b) & (c) as indicated below:]

(a) \* \* \* \*

(b) Transcript of Stenographic or Other Substantially Verbatim Recording of Evidence or Proceedings. Except as provided in subdivision (c), if a stenographic report or other contemporaneously recorded, substantially verbatim recital of the evidence or proceedings is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the clerk of the trial court and serve on the appellant a designation of additional parts to be included. The appellant shall either have the additional parts prepared at the appellant's own expense or apply to the trial court for an order requiring the appellee to do so. The transcript, certified by the appellant, the appellant's counsel, or the reporter as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 60 days after filing the notice of appeal. An electronic copy of the transcript, meeting the technical specifications set by the Administrative Office of the Courts, shall be filed with the original transcript. Upon filing the transcript, the appellant shall simultaneously serve notice of the filing on the appellee. Proof of service shall be filed with the clerk of the trial

202 court with the filing of the transcript. If the appellee has objections to the transcript as filed, the  
203 appellee shall file objections thereto with the clerk of the trial court within fifteen days after service  
204 of notice of the filing of the transcript. Any differences regarding the transcript shall be settled as  
205 set forth in subdivision (e) of this rule.

206 (c) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no  
207 stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is  
208 available, or if the trial court determines, in its discretion, that the cost to obtain the stenographic  
209 report is beyond the financial means of the appellant or that the cost is more expensive than the  
210 matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable  
211 alternative to a stenographic report, the appellant shall prepare a statement of the evidence or  
212 proceedings from the best available means, including the appellant's recollection. The statement  
213 should convey a fair, accurate and complete account of what transpired with respect to those issues  
214 that are the bases of appeal. The statement, certified by the appellant or the appellant's counsel as  
215 an accurate account of the proceedings, shall be filed with the clerk of the trial court within 60 days  
216 after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve  
217 notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the  
218 appellant intends to present on appeal. Proof of service shall be filed with the clerk of the trial court  
219 with the filing of the statement. If the appellee has objections to the statement as filed, the appellee  
220 shall file objections thereto with the clerk of the trial court within fifteen days after service of the  
221 declaration and notice of the filing of the statement. Any differences regarding the statement shall  
222 be settled as set forth in subdivision (e) of this rule.

223 (d) \* \* \* \*

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*Advisory Commission Comment [2014]*

225            *Subdivision (b)*. Tenn. R. App. P. 24(b) was amended to cross-reference subdivision (c),  
226 which sets out an exception to subdivision (b)'s requirement that the appellant prepare a  
227 "stenographic report or other contemporaneously recorded, substantially verbatim recital of the  
228 evidence or proceedings[,]" if "available."

229            Tenn. R. App. P. 24(b) also was amended to require the filing of an electronic copy of the  
230 transcript, along with the original transcript. The electronic copy must meet the technical  
231 specifications established by the Administrative Office of the Courts ("AOC"); those specifications  
232 may be obtained on the Tennessee appellate courts' website (<http://www.tncourts.gov>) or by  
233 contacting the AOC.

234            Along with this amendment to Tenn. R. App. P. 24(b), Tenn. R. App. P. 25(a) was amended  
235 to require the trial court clerk to include both the original transcript and the electronic copy of the  
236 transcript in the record on appeal (in those cases in which a transcript is filed). The purpose of  
237 requiring the submission of an electronic copy of the transcript is to facilitate the appellate court's  
238 efficient review of the appeal.

239            *Subdivision (c)*. Tenn. R. App. P. 24(c) was amended to provide that a statement of the  
240 evidence or proceedings may be filed – instead of a stenographic report or other contemporaneously  
241 recorded, substantially verbatim recital of the evidence or proceedings – if the trial court determines,  
242 in its discretion, that the cost to obtain the stenographic report is beyond the financial means of the  
243 appellant or that the cost is more expensive than the matters at issue on appeal may justify. In  
244 making its determination, the trial court should start with the presumption that the cost to obtain the  
245 stenographic report is beyond the financial means of an appellant who is appealing as an indigent  
246 person as allowed by Tenn. R. App. P. 18.

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TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 25

COMPLETION AND TRANSMISSION OF THE RECORD

[Amend Tenn. R. App. P. 25(a) by adding the underlined text indicated below and also amend Tenn. R. App. P. 25 by adding the new subdivision (h) below:]

**(a) Time for Completion of the Record; Duty of the Parties.** – The record on appeal shall be assembled, numbered and completed by the clerk of the trial court within 45 days after filing of the transcript or statement prepared in accordance with Rule 24(b) or 24(c) or, if no transcript or statement is to be filed, within 45 days after filing of appellant’s notice under Rule 24(d) that no transcript or statement is to be filed, unless the time is extended by an order entered under subdivision (d) of this rule or if proof of service of the notice of appeal has not been filed. Unless the time has been extended by order, if the appellant fails to file within 60 days from the filing of the notice of appeal either the transcript or statement of evidence prepared pursuant to Rule 24(b) or 24(c) or the notice under Rule 24(d) that no transcript or statement is to be filed, the clerk of the trial court shall provide written notice within 10 days to the clerk of the appellate court of the appellant’s failure to comply with Rule 24(b) or (c) or (d), with a copy provided to counsel and pro se parties. After filing notice of appeal the parties shall comply with the provisions of Rule 24 and shall take any other action necessary to enable the clerk to complete the record. If a transcript is filed in accordance with Rule 24(b), the clerk shall include both the original transcript and the electronic copy of the transcript in the record. The clerk of the trial court shall number the pages of the documents comprising the record and shall prepare for transmission with the record a list of

268 the documents correspondingly numbered and identified with reasonable definiteness. Copies of all  
269 papers filed in the trial court, except the transcript or statement of the evidence or proceedings and  
270 exhibits, shall be bound together in chronological order; such bound volume (or, if more than one  
271 bound volume, the first such volume) shall contain a table of contents listing in chronological order  
272 all of the papers filed in the trial court with each document's corresponding page number.

273 Exhibits shall be compiled in numerical order and bound in a volume or volumes separate  
274 from the volume of papers filed in the trial court and separate from the transcript or statement of the  
275 evidence or proceedings. The volume of exhibits shall contain a table of contents listing all exhibits,  
276 whether or not they are included in the record. Each exhibit to be included in the record shall be  
277 securely stapled to a blank page, or placed in a durable envelope which shall be securely stapled to  
278 a blank page, or placed within a plastic sheet protector; each such page or plastic sheet protector then  
279 shall be bound within the volume of exhibits. If an exhibit is not included in the record pursuant to  
280 subdivision (b) of this rule, or if an exhibit is included in the record but cannot be bound into the  
281 volume of exhibits due to the nature of the exhibit, the trial court clerk shall include in numerical  
282 order in the volume of exhibits a page indicating the number of the exhibit, a description of the  
283 exhibit, and a statement of the reason the exhibit is not contained in the volume of exhibits. All  
284 exhibits which are to be included in the record but which cannot be bound in the volume of exhibits  
285 due to the nature of the exhibits shall be placed securely in a durable envelope or other suitable  
286 container, which shall be labeled with the style of the case, the docket number, and the exhibit  
287 number of the exhibit contained therein.

288 (b) \* \* \* \*



319

TENNESSEE RULES OF CIVIL PROCEDURE

320

RULE 12

321

DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED:

322

BY PLEADING OR MOTION: MOTION FOR JUDGMENT ON PLEADINGS

323

[Amend Rule 12.02 by adding the new Comment below; the text of the rule is unchanged:]

324

*proposed*

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*Advisory Commission Comment [2014]*

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**12.02.** Effective July 1, 2012, Tennessee Code Annotated Section 20-12-119 was amended to add subsection (c) which authorizes the trial court, under certain circumstances, to award costs and reasonable and necessary attorney's fees to a party who prevails on a motion to dismiss for failure to state a claim upon which relief may be granted. Section 20-12-119(c) requires the party or parties whose claim or claims were dismissed to pay the awarded costs and fees.

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TENNESSEE RULES OF CIVIL PROCEDURE  
RULE 54  
JUDGMENTS AND COSTS

[Amend Rule 54.04 by adding the new Comment below; the text of the rule is unchanged:]

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*Advisory Commission Comment [2014]*

**54.04.** Effective July 1, 2012, Tennessee Code Annotated Section 20-12-119 was amended to add subsection (c) which authorizes the trial court, under certain circumstances, to award costs and reasonable and necessary attorney’s fees to a party who prevails on a motion to dismiss for failure to state a claim upon which relief may be granted. Section 20-12-119(c) requires the party or parties whose claim or claims were dismissed to pay the awarded costs and fees.

342

TENNESSEE RULES OF CRIMINAL PROCEDURE

343

RULE 15

344

DEPOSITIONS

345 [Amend Tenn. R. Crim. P. 15(a)(1) (“When Taken: In General”) by adding the new second and third  
346 sentences indicated below by underlining:]

347 (1) *In General.* -- A party may move that a prospective witness be deposed in order to  
348 preserve testimony for trial. Any such motion may be filed at any time after the defendant’s initial  
349 appearance before a magistrate and after the defendant has been afforded counsel. Such motion  
350 shall be filed in a court of record. The Court may: . . . .

351

*Advisory Commission Comment [2014]*

352 Rule 15(a)(1) was amended by adding the second and third sentences, which provide that  
353 a motion to take the deposition of a prospective witness may be filed at any time after a defendant’s  
354 initial appearance before a magistrate as required by Tenn. R. Crim. P. 5(a)(1) and that such motion  
355 shall be filed in a court of record. The amendment did not affect any other provision of Tenn. R.  
356 Crim. P. 15 and in no way altered the requirement that depositions taken pursuant to this rule are  
357 for the preservation of testimony for use at trial and not for discovery. The amendment’s  
358 requirement that a motion for a deposition be filed in a “court of record” signifies that such motions  
359 are not within the jurisdiction of the general sessions court under Tenn. R. Crim. P. 1(b).

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TENNESSEE RULES OF CRIMINAL PROCEDURE  
RULE 42  
CRIMINAL CONTEMPT

[Amend Rule 42(b) as indicated below:]

(a) SUMMARY DISPOSITION. – A judge may summarily punish a person who commits criminal contempt in the judge’s presence if the judge certifies that he or she saw or heard the conduct constituting the contempt. The contempt order shall recite the facts, be signed by the judge, and entered in the record.

(b) DISPOSITION ON NOTICE AND HEARING. – A criminal contempt shall be initiated ~~prosecuted~~ on notice, except as provided in subdivision (a) of this rule.

(1) CONTENT OF NOTICE. – The criminal contempt notice shall:

- (A) state the time and place of the hearing;
- (B) allow the alleged contemner ~~defendant~~ a reasonable time to prepare a defense; and
- (C) state the essential facts constituting the criminal contempt charged and describe it as such.

376 (2) FORM OF NOTICE. – The judge shall give the notice orally in open court  
377 in the presence of the alleged contemner defendant or by written order, including an  
378 arrest order if warranted. The notice and order may also issue on application of the  
379 district attorney general, ~~or of an attorney~~ appointed by the court for that purpose,  
380 or an attorney representing a party in the case ~~by a show cause or arrest order.~~

381 (3) RELEASE ON BAIL. – The alleged contemner ~~criminal contempt~~ defendant  
382 is entitled to admission to bail as provided in these rules.

383 (4) DISQUALIFICATION OF JUDGE. – When the contempt charged involves  
384 disrespect to or criticism of a judge, that judge is disqualified from presiding at the  
385 hearing, except with the alleged contemner's ~~defendant's~~ consent.

386 (5) PUNISHMENT ORDER. – If the court finds the alleged contemner to be in  
387 ~~defendant guilty of~~ contempt, the court shall enter an order setting the punishment.

388 *Advisory Commission Comment [2014]*

389 The reference in Rule 42(b)(2) to “a show cause order” was deleted. The burden of proof  
390 in a criminal contempt proceeding governed by subdivision (b) of the rule is on the district attorney  
391 or other attorney prosecuting the charge of criminal contempt, and requiring a contempt defendant  
392 to “show cause” why he or she should not be held in contempt impermissibly placed the burden of  
393 proof on the contempt defendant.

394 Subdivision (b)(2) also was amended to add “an attorney representing a party in the case”  
395 in order to conform the rule to current practice. This rule also guides criminal contempt proceedings

396 arising in civil cases that involve attorneys for the parties. *See, e.g., Wilson v. Wilson*, 984 S.W.2d  
397 898 (Tenn. 1998).

398 Subdivision (b) also was amended to use the term “alleged contemner” throughout the  
399 subdivision, instead of only the word “defendant,” to prevent confusion by distinguishing the person  
400 charged with criminal contempt from a named defendant in a particular case. A party charged with  
401 criminal contempt may or may not be a named defendant in the particular case. The new term  
402 conforms the language of the rule to the terminology in *Baker v. State*, \_\_\_ S.W.3d \_\_\_, \_\_\_ 2013  
403 WL 4768309, at \*6-7 (Tenn. 2013).

*proposed*

404 ***[end of Appendix]***