

## **E-Filing Appeals in Tennessee – February 25, 2021**

By: Donald Capparella, James Hivner, Kimberly Macdonald, & Kevin Ritz

In Tennessee, Supreme Court Rule 46 authorized e-filing. It went into effect in July 2018 and is still a “transitional” rule. Accordingly, parties may choose to utilize the e-filing system to file their documents with the appellate courts in this state, or they may choose to utilize traditional paper filing. The full text of the rule is attached to these materials along with a checklist for e-filing. This document will provide a basic outline of the most important aspects of the rule and some practice tips.

### **I. REGISTRATION (TENN. S. CT. R. 46, § 2)**

- a. Serves multiple purposes: (1) access e-filing service, (2) provide contact information for service, and (3) consent to e-service
- b. Register on TrueFiling (<https://tf3.truefiling.com>) (click “sign up”)
  - i. **Tip: remember to update your contact information if you switch firms and/or emails! See Tenn. S. Ct. R. 46, § 2.03 (“E-service on an obsolete e-mail address shall constitute valid service on the registered user.”)**
  - ii. **Tip: preview each document uploaded before submitting the filing (verify that you are not filing a draft or an incorrect version)**

### **II. TIMING AND TECHNOLOGICAL ISSUES (TENN. S. CT. R. 46, §§ 3, 5)**

- a. E-filed upon submission (emailed confirmation will show timestamped proof of service)
  - i. **Tip: ensure you get this confirmation!**
- b. Midnight deadline to file
  - i. **Tip: pay attention to the time zone of your court! See Tenn. S. Ct. R. 46, § 3.02(d) (deadline operates by the time zone of division, not your location)**
- c. Technological issues
  - i. Problems on court’s end: site down (e.g., Christmas bombing and no internet for court sites)
    - Check to see if clerk issued a declaration of a system outage explaining deadlines, remedies. See Tenn. S. Ct. R. 46, § 5.01
  - ii. Problems on user’s end: loss of internet access, power outage
    - If time, may reformat and physically file
    - If no time, may move court to file *nunc pro tunc*. See Tenn. S. Ct. R. 46, § 5.02

### **III. FORMAT AND SIGNATURES (TENN. S. CT. R. 46, § 3)**

- a. Pay attention to word counts, broader than for physically-filed documents (includes statement of issues through signature, also footnotes)
  - i. Word counts per brief:
    - Principal briefs = 15,000 words
    - Reply briefs = 5,000 words
    - Amicus briefs = 7,500 words
  - ii. **Tip: check that your word count program on your word processing program is including footnotes (can select the option)**

- iii. Can move the Court for additional space or choose to physically file, but if not an inherently complex appeal with multiple parties, consider whether editing could serve your purpose instead
- b. Font and font size
  - i. Century family, 14-point font (including footnotes), 1.5 spacing, full justification spacing
  - ii. Pages are numbered consecutively and includes cover page—no Roman Numerals for tables like with physical filing
- c. Internal and external hyperlinks
  - i. Section 3.02(a)(7) references a preference to including a hyperlink with each citation
- d. File text-searchable PDF documents (i.e., do not print and scan in as a flat PDF)
  - i. Microsoft Word and other programs have this functionality (save as, select PDF)
  - ii. Exception: attachments, appendices, and anything requiring a signature under penalty of perjury or notarization—may scan in as PDF
  - iii. **Tip: use OCR functionality on Adobe Pro or Nitro Pro to make text searchable**
- e. Certificate of compliance
  - i. Must state compliance with Section 3.02 (font, size, word count); example:

**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Tenn. S. Ct. R. 46, §3.02(a) because this brief contains \_\_\_\_\_ words, excluding the parts of the brief exempted by Tenn. S. Ct. R. 46, §3.02(a)(1).

This brief complies with the typeface requirements of Tenn. S. Ct. R. 46, §3.02(a) and the type style requirements of Tenn. S. Ct. R. 46, §3.02(a) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman.

[signature]

[name]

[date]

**IV. SERVICE**

- a. Automatic service for registered users—edit certificate of service to include option for e-service to be the only form of service
  - i. **Tip: still best practice to email a courtesy copy or mail**
  - ii. **Tip: remember to serve opposing counsel not registered with e-filing by traditional means**

## **RULE 46: ELECTRONIC FILING.**

**Introduction.** The Supreme Court intends to adopt electronic filing (“e-filing”) in the appellate courts at a future date. This revised Rule 46, adopted effective July 9, 2018, is a transitional rule authorizing parties to e-file documents voluntarily until such time that the Court adopts e-filing on a permanent basis.

### **Section 1. General Provisions**

#### **1.01. Definitions.**

- (a) “Appellate Court” or “Court” means the Tennessee Supreme Court, Tennessee Court of Appeals, or Tennessee Court of Criminal Appeals.
- (b) “Certificate of Compliance” means a signed certification by the E-filer that is attached to the filed brief and that certifies that the brief complies with the requirements set forth in Section 3, Rule 3.02 of this Rule. The Certificate must state the number of words contained in the brief.
- (c) “Clerk” means the clerk of the appellate courts.
- (d) “E-filing fee” is a fee charged in connection with electronic filing that is in addition to statutory filing fees.
- (e) “Document” means a motion, application, request, exhibit, brief, memorandum of law, or other instrument in paper form or electronic form which is permitted to be filed pursuant to the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, or the Rules of the Court of Criminal Appeals.
- (f) “E-file” or “e-filing” means the electronic transmission of documents in cases pending in the appellate courts, using the dedicated e-filing system maintained by the clerk.
- (g) “E-filer” means a registered user who submits a document for e-filing through the e-filing system.
- (h) “E-filing system” means a web-based system maintained by the clerk for the purpose of providing a means for e-filers to transmit documents to the clerk for filing.
- (i) “Electronic signature” means a signature line beginning with an “s/” followed by the typewritten name of the signatory.
- (j) “E-service” means the electronic transmission of e-filed documents to a party or a party’s attorney through the e-filing system.
- (k) “Portable Document Format” or “PDF” means the computer file format developed by Adobe Systems Incorporated for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents.
- (l) “Registered user” means any person listed in section 2.01 who has properly registered with the clerk to e-file documents in the appellate courts.
- (m) “Terms-of-use agreement” means that agreement established by the clerk that sets forth the parameters for use of the e-filing system by all registered users.

- (n) “Transaction receipt” means an e-mail confirmation that is transmitted to an e-filer after an e-filer has submitted a document to the clerk to be filed through the e-filing system. The transaction receipt displays the date and time the document was submitted by the e-filer. The transaction receipt may serve as the e-filer’s proof of filing.
- (o) “User guide” means the court’s written guide for using the e-filing system, which shall be posted as a PDF document on the appellate courts’ website (<http://www.tncourts.gov/>). All e-filers should periodically check the appellate courts’ website for updates to the user guide.

**1.02. Application of the Rule.** This rule applies to all cases filed in the appellate courts. Except as provided in this rule, any document may be e-filed that otherwise would be filed in the appellate court as a paper document in accordance with the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, or the Rules of the Court of Criminal Appeals. Such e-filings shall constitute the official filing of such documents for purposes of the foregoing rules.

The appellate court may, on motion for good cause shown or on the court’s own initiative, waive any provision of this rule.

## **Section 2. Registered Users.**

**2.01. Registered Users.** The following persons may e-file documents upon completion of the registration requirements of this rule:

- (a) Attorneys licensed to practice law in Tennessee;
- (b) Attorneys admitted or who seek to be admitted pro hac vice pursuant to Tenn. Sup. Ct. R. 19.

**2.02. Registration.** Any person listed in section 2.01 who desires to e-file documents in the appellate courts shall register with the clerk. Upon receipt of a properly executed terms-of-use agreement, the e-filing system shall generate to the registered user an initial confidential log-in name and password to access the e-filing system. Each registered user shall safeguard the registered user’s log-in name and password and any e-filing shall be presumed authorized by the registered user whose log-in name and password were used to transmit said e-filing. Except as expressly permitted in this rule, documents shall be e-filed using the log-in name and password of the registered user who signed the document being filed. Registration with the clerk constitutes consent by the registered user to receive electronic service of all documents and electronic notices issued by the appellate court or the clerk.

**2.03. Duty of Registered User to Update Contact Information.** Registered users shall change their profile maintained in the e-filing system immediately upon any change in the registered user’s name, law firm name, delivery address, telephone number, fax number, or e-mail address. E-service on an obsolete e-mail address shall constitute valid service on the registered user.

**2.04. User Guide.** The clerk will provide all registered users with access to an online user guide to assist them in e-filing.

### **Section 3. Filing and Service Procedures.**

#### **3.01. Time and Effect of E-Filing.**

- (a) *Filed upon transmission.* Subject to acceptance by the clerk pursuant to paragraph (b), any document electronically submitted for filing shall be considered filed with the court when the transmission to the court's e-filing system is completed. Upon receipt of the transmitted document, the e-filing system shall automatically e-mail a transaction receipt to the e-filer, stating that the transmission of the document was completed and also stating the date and time of the document's receipt. The e-filer is responsible for verifying that the court received and filed the document transmitted. Absent confirmation of receipt, there is no presumption that the court received and filed the document. The transaction receipt shall serve as proof of filing.
- (b) *Review by clerk.* The clerk may review the document to determine if it conforms with the applicable filing requirements. If the clerk rejects the document for filing because it does not comply with the applicable filing requirements or because any required filing fee has not been paid, the clerk must promptly send notice to the registered user who filed the document; the notice must set forth the reason(s) the document was rejected for filing. If the clerk rejects the filing, the clerk may, in his or her discretion, give the filing party up to 3 days to correct the deficient filing; upon the filing party's timely submission of a corrected filing, the filing shall relate back to the date of the initial filing. Notification that the clerk has accepted the document for filing is not required.
- (c) *"Filed" Stamp.* E-filed documents accepted for filing by the clerk shall have a "filed" stamp affixed by the clerk. The clerk's stamp of an e-filed document must contain the following: "Electronically Filed/[Date] and Time/[Name of Clerk]." This "electronically filed" stamp has the same force and effect as a manually affixed "filed" stamp of the clerk.
- (d) *Time of filing.* Any document e-filed by 11:59 p.m. at the clerk's local time in the grand division in which the appeal lies shall be deemed to be filed on that date, so long as it is accepted by the clerk upon review.
- (e) *Documents Filed by the Court.* The court may electronically transmit orders, opinions, judgments, and other court-issued documents through the appellate courts' e-filing system.

When a document electronically transmitted by the court for filing by the clerk requires the signature of the judge(s), clerk, or authorized deputy clerk, the signature may be reflected at the end of the document by means of an electronic signature in the format: "s/ [judge's/clerk's/deputy clerk's name]," followed by the appropriate title (i.e., "Judge," "Clerk," "Deputy Clerk"). Any order, opinion, judgment, or other court-issued document filed electronically without the handwritten signature of the judge(s), clerk, or authorized deputy clerk but containing an approved

electronic signature has the same effect as if the judge or clerk had signed a paper copy of the filing.

### **3.02. Format of Documents.**

- (a) All e-filed documents shall be formatted in accordance with the terms-of-use agreement, the following requirements, and the applicable rules of the Tennessee Rules of Appellate Procedure, the Rules of the Court of Appeals, and the Rules of the Court of Criminal Appeals governing formatting of paper-filed documents in the appellate courts, except that the provisions of the Rules of Appellate Procedure, the Rules of the Court of Appeals, and the Rules of the Court of Criminal Appeals relating to the number of copies, the color of the cover page, and the types of paper shall not apply. To the extent that there is any conflict between any other procedural rules and the provisions of this Rule concerning the format of documents that are e-filed, the provisions of this Rule shall govern.

1. Word limitations: Except by order of the Court, briefs shall comply with the following word limitations:
  - (a) Principal briefs shall be limited to 15,000 words.
  - (b) Reply briefs shall be limited to 5,000 words.
  - (c) Amicus briefs shall be limited to 7,500 words.

The following sections of a brief shall be excluded from these word limitations: the Title/Cover page, Table of Contents, Table of Authorities, and Certificate of Compliance.

2. Text density.
  - (a) Line spacing - 1.5
  - (b) Margin - 1 inch
3. Font and font size.
  - (a) Font - Any font within the Century Family
  - (b) Font size – 14-point font size
  - (c) Footnotes - Footnotes shall be in the same font and font size as the text.
4. Justification. Full justification is required.
5. Pagination. Pagination shall begin with page 1. For briefs, page 1 will be the cover page.
6. Navigation. The use of internal hyperlinks and bookmarks is encouraged.
7. The use of external hyperlinks to legal authorities is encouraged. External hyperlinks to legal authorities may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material in a filed document. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The Court accepts no responsibility for the availability or functionality of any hyperlink.

- (b) All original documents (e.g., applications, briefs, motions, memoranda of law, and similar documents) that are e-filed shall be prepared through direct conversion from the word processing file to Portable Document Format and not through scanning of the original paper document. Notwithstanding the foregoing sentence, all attachments and appendices containing photocopies of documents may be scanned into Portable Document Format. E-filed PDF documents shall be text searchable, if possible.
- (c) Certificate of Compliance. An e-filed brief must include a Certificate of Compliance. The Certificate's statement of the number of words contained in the brief may be based upon the word count of the word processing system used to prepare the brief.

### **3.03. Payment of Filing Fees.**

- (a) Unless excused by statute or the Court, statutory filing fees or other statutorily permitted fees and taxes required to be paid at the time of filing of an e-filed document must be paid with an approved form of electronic payment at the time of e-filing.
- (b) E-filing fees paid by the filing party are recoverable costs for purposes of Tenn. R. App. P. 40(c).

### **3.04. Signatures.**

- (a) *Registered User's Signature.* A registered user's use of the assigned log-in name and password to e-file a document serves as that user's signature on that document for all purposes. The identity of the e-filer must be reflected at the end of the document by means of an electronic signature, followed by the user's name, business address, telephone number, e-mail address, and number assigned by the Board of Professional Responsibility, if applicable.
- (b) *Multiple signatures.* An e-filer e-filing a document requiring the signatures of multiple attorneys (e.g., stipulations) must list thereon the names of all other attorney signatories and include their electronic signatures. By e-filing such a document, the e-filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, and that the e-filer has their permission to e-file the document. In the alternative, the e-filer may submit a scanned document containing all necessary signatures.
- (c) *Signatures Under Penalty of Perjury and Notarized Signatures.* Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be e-filed, provided that the declarant or notary public has signed a printed form of the document. The printed document bearing the original signatures must be scanned as a PDF in a format that accurately reproduces the original signatures and contents of the document and electronically submitted for filing.
- (d) *Effect of Signatures on E-Filed Documents.* Any filing made under this rule shall bind the signatory as if a paper document were physically signed and filed. An e-filing therefore shall function as the signatory's attestation to the truthfulness of an e-filed affidavit,

declaration, or certification, or as a validly signed document for any other purpose under the Tennessee Rules of Appellate Procedure or other court rule.

#### **Section 4. Electronic Service.**

**4.01. Automatic Service by E-Filing System.** Upon the receipt of an e-filed document, the e-filing system will automatically generate and send by e-mail a notice of filing along with the document to all registered users participating in the case. This automatically generated notice shall constitute proper service of the e-filed document on those registered users and shall have the same legal effect as service of a paper document under Tenn. R. App. P. 20. Independent service, either by paper or otherwise, need not be made on any registered user receiving e-service. Attorneys and self-represented parties who did not receive e-service must be served by the e-filer through the conventional means of service set forth in Tenn. R. App. P. 20.

**4.02. E-Service of Documents Filed by the Court.** The clerk's e-service on a registered user of a notice, order, opinion, or judgment filed by the court shall constitute proper service and shall satisfy the notice requirements of the Tennessee Rules of Appellate Procedure, including the mailing requirements of Tenn. R. App. P. 5(c), 23, and 38.

#### **Section 5. Effect of Technical Failure in E-Filing.**

**5.01. Motion to File Document Nunc Pro Tunc.** If the e-filing does not occur because of: (1) a technical error in the transmission of the document to the clerk, which error was unknown to the sending party, (2) a failure to process the electronic document when received by the clerk, (3) rejection of the transmitted document by the court or clerk, or (4) other technical problems experienced by either the e-filer or the clerk, the court may, upon motion of the filing party, enter an order directing that the document be filed nunc pro tunc to the date the document was first attempted to be filed electronically. If the court directs the filing of the document nunc pro tunc, the court also shall extend the date for filing any response to the delayed filing and may extend the period within which any other right, duty, or other act must be performed.

**5.02. E-Filing System Outage.** In the event the e-filing system is offline for technical reasons for a significant portion of a particular day, the clerk, in his or her discretion, is authorized to issue a written declaration that the e-filing system is unavailable for filing on that day, in which event all filings due on that day from Registered Users shall be deemed to be timely if filed the following day. If the clerk issues such a declaration, no party is required to file a motion seeking permission to file a document nunc pro tunc, pursuant to section 5.01.

## Brief Checklist for E-Filing in Tennessee

- \_\_\_\_\_ Cover Page (check style, case number, spelling of names, COA section, title) (page 1)
- \_\_\_\_\_ Oral Argument Requested
- \_\_\_\_\_ Table of Contents
- \_\_\_\_\_ Table of Authorities
- \_\_\_\_\_ Statement of the Issues (All issues have to be raised here, including any request for attorney's fees on appeal)
- \_\_\_\_\_ Statement of the Case
- \_\_\_\_\_ Statement of the Facts
- \_\_\_\_\_ Argument
- \_\_\_\_\_ Statement of standard of review
- \_\_\_\_\_ Conclusion
- \_\_\_\_\_ Certificate of Compliance
  - \_\_\_\_\_ 14-point font (including footnotes)
  - \_\_\_\_\_ Line spacing at 1.5
  - \_\_\_\_\_ Full justification
  - \_\_\_\_\_ Pagination – page 1 is cover page
  - \_\_\_\_\_ Word count (begin at statement of issues through signature block)
    - 15,000 words for principal brief
    - 5,000 words for reply brief
- \_\_\_\_\_ Certificate of Service (specify e-filing)
- \_\_\_\_\_ Subsequent history for unpublished cases
- \_\_\_\_\_ Appendix included (if applicable)
- \_\_\_\_\_ Check any math
- \_\_\_\_\_ Print and proofread in final form
- \_\_\_\_\_ Signatures

**Return appellate record**