

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

**IN RE: AMENDMENTS TO TENNESSEE
 RULES OF APPELLATE PROCEDURE**

Filed: January 8, 2008

ORDER

The Court adopts the attached amendments effective July 1, 2008, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 6 SECURITY FOR COSTS ON APPEAL
RULE 40 COSTS.

FOR THE COURT:

WILLIAM M. BARKER
CHIEF JUSTICE

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 6

SECURITY FOR COSTS ON APPEAL

[Insert the following new three sentences to paragraph (a) between the present fourth and fifth sentences:]

In order to ensure that a surety is sufficient, the appellate court clerk may require the surety to provide proof that the surety has sufficient assets in the State of Tennessee to pay the costs of the appeal. If the appellate court clerk determines that the surety is not sufficient, the appellate court clerk may reject the bond for costs. The surety may appeal the decision of the appellate court clerk to the appellate court by filing a motion to approve the bond for costs within 10 days of the decision of the appellate court clerk.

2008 Advisory Commission Comment

The 2008 amendment authorizes the appellate court clerk to require a surety to provide proof that the surety has sufficient assets in the State of Tennessee to pay the costs of the appeal. The purpose of this amendment is to establish a procedure by which the sufficiency of a surety can be reviewed in order to ensure that payment of the costs of an appeal are secured at the beginning of the appeal.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 40

COSTS

[Delete present paragraphs (d) through (g) and add the following new paragraphs (d) through (i):]

(d) Party's Statement of Recoverable Costs; Objections.-If a party has not been assessed costs on appeal under section (a) of this rule, that party may file with the appropriate appellate court a Party's Statement of Recoverable Costs in order to recover costs on appeal pursuant to section (c) of this rule. The party shall file the Party's Statement of Recoverable Costs no later than 15 days after the issuance of the mandate; the Party's Statement of Recoverable Costs may not be filed before the issuance of the mandate. The party against whom costs have been assessed under section (a) shall be liable for such costs. If the court assesses costs against both the appellant and appellee, the parties shall bear their own costs and may not recover any costs on appeal under section (c) of this rule. Any party shall have 15 days after the filing of the Party's Statement of Recoverable Costs to file any objections with the appellate court clerk.

(e) Rate of Cost for Producing.-A party's costs of producing necessary copies of briefs or other appellate papers which are recoverable costs under section (c) shall be taxable at rates not higher than those generally charged for photocopying in the area where the office of the attorney seeking such costs is located.

(f) Resolution of Ojections to Party's Statement of Recoverable Costs.-If objections are timely filed to the Party's Statement of Recoverable Costs, the appellate court clerk

shall consider all of the documents filed relative to the Party's Statement of Recoverable Costs and issue a clerk's report in which the clerk shall approve and/or disapprove such costs in whole or in part as being authorized and/or not authorized by law. Any party may file an objection to the clerk's decision with the appropriate appellate court within 10 days of the filing of the clerk's report.

(g) Amended Mandate.-If no objection to a Party's Statement of Recoverable Costs is timely filed, the appellate court clerk shall issue an amended mandate with the addition of the Party's Statement of Recoverable Costs. If no objection to the clerk's report is timely filed, the appellate court clerk shall issue an amended mandate with the addition of the clerk's report and accompanying Party's Statement of Recoverable Costs to the mandate. If an objection to the clerk's report is timely filed, the appellate court clerk shall issue an amended mandate by adding the order of the appropriate appellate court resolving the cost dispute.

(h) Enforcement of Amended Mandate.-A party who seeks to enforce collection of the Party's Statement of Recoverable Costs in the amended mandate from the liable party may do so by filing a motion in the trial court from which the appeal originated.

(i) Forfeiture of Costs of the Clerk of the Trial Court.-For failure to complete and transmit the record on appeal in the time and manner provided in these rules, the clerk of the trial court shall forfeit the clerk's entire fee set forth in Tenn. Code Ann. §8-21-401(i)(11) for preparing and transmitting the record or such portion thereof as appropriate to the appellant(s) who paid such a fee.

2008 Advisory Commission Comment

The 2008 amendment to Rule 40 amends the rule to conform to the present practice in the appellate court clerk's office in the following respects: (1) To avoid confusion with the appellate court clerk's "bill of costs," the document submitted by attorneys has been renamed as the "Party's Statement of Recoverable Costs." (2) The 2008 amendment makes clear that the party against whom the costs, i.e., appellate court clerk's costs, are assessed are also liable for costs properly included in a Party's Statement of Recoverable Costs. Where the court divides the costs, neither party can seek "recoverable costs" from the other party, but instead the parties must bear their own costs of copying briefs, etc. (3) The 2008 amendment requires parties to file the Party's Statement of Recoverable Costs no more than 15 days after the issuance of the mandate but no sooner than the date of the issuance of the mandate. Under the prior rule, parties could file their "verified bill of costs" before the mandate issued, which created an unnecessary administrative burden on the clerk's staff. (4) The 2008 amendment also sets forth a process by which disputes concerning a Party's Statement of Recoverable Costs are resolved. (5) Depending upon at what stage of the process the Party's Statement of Recoverable Costs is resolved, the 2008 amendment makes clear that the Party's Statement of Recoverable Costs, the clerk's report, or the order of the appellate court is to be included in an amended mandate to be transmitted to the trial court clerk. (6) Finally, the 2008 amendment provides that the party entitled to recover these costs may do so by filing a motion in the trial court which already has the original judgment in which costs are assessed against the other party and the amended mandate in which the prevailing party's Party's Statement of Recoverable Costs are included.