PRO SE LITIGANT

FILING GUIDE

FOR THE APPELLATE

COURTS OF TENNESSEE

Appellate Court Clerk's Office
Supreme Court Building
401 7th Avenue North
Nashville, TN 37219

(Revised March 31, 2010)

Introduction[1]

The Office of the Appellate Court Clerk is pleased to provide pro se litigants with a second revised filing guide for the appellate courts of Tennessee. When you are not represented by a lawyer and you lose your case, it is hard to know how to appeal the trial court's decision to a higher court. This guide is intended to provide general assistance to persons who (not represented by a lawyer) want to appeal their cases to the appellate courts in this State.

With the exception of the notice of appeal which must be filed in the trial court from which a party is appealing a final judgment, all motions, briefs and other pleadings filed in the appellate courts in Tennessee must be filed in one of three offices of the Appellate Court Clerk. These offices are located in Nashville, Knoxville and Jackson. The staff in all three offices are here to serve all litigants in the appellate courts of Tennessee including pro se litigants. The staff are happy to provide pro se litigants with the following information: (1) the status of a case (what last happened in the case): (2) general information on court rules, procedures and practices; and (3) certain forms and sample pleadings such as notice of appeal and appeal bond forms. However, the staff are not permitted to do any of the following: (1) provide legal advice; (2) estimate when an opinion will be filed; (3) state to which judge a case has been assigned to write the opinion after oral argument or submission of the briefs; (4) provide advice as to whether a pro se litigant should or should not file an appeal or take certain action; or (5) fill out any form or tell a pro se litigant what words to put in the form.

Included in the guide are the following sections: (1) Frequently Asked Questions; (2) Time-line for an Appeal and Brief Color Chart; and (3) Forms and Sample Pleadings. I hope that this guide will be of help to pro se litigants who wish to pursue an appeal in the appellate courts of this State. Additional information for pro se litigants is located at the web site of the Appellate Court Clerk's Office located at: www.tncourts.gov. At this web site, there are all of the forms discussed and shown in this Filing Guide as well as other valuable information such as the oral argument calendars for all the appellate courts and a Public Case History search engine which enables pro se litigants to check the present status of an appeal.

Michael W. Catalano
Clerk of the Appellate Courts

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[1]This Filing Guide should not be relied on as a substitute for the full text of the Tennessee Rules of Appellate Procedure which may be found at the Tennessee Court System Web Site under Court Rules at: www.tncourts.gov.

Frequently Asked Questions

What is a notice of appeal?

A notice of appeal is a short statement that you file with the trial court clerk if you are dissatisfied with the final judgment of a trial court and want to have an appellate court review the trial court decision. The notice of appeal should contain the following information: (1) a list of all the parties taking the appeal in either the caption or the body of the notice of appeal; (2) a designation of the final judgment from which you are appealing by listing the date of the judgment and the trial court that entered the judgment; and (3) the appellate court to which you are taking the appeal. A Form Notice of Appeal is attached to this Filing Guide as **Attachment 1**. The Appellate Court Clerk's Office prefers that you use this notice as it includes additional information necessary for the processing of your appeal in our computer-automated case management system.

Where do I file a notice of appeal?

You are required to file a notice of appeal with the trial court clerk of the court in the county from which you are seeking to appeal the case.

When do I file a notice of appeal?

You must file a notice of appeal within 30 days of filing of the final judgment of the trial court. If the 30th day falls on a weekend or a state holiday, then you can file the notice of appeal on the first business day after the weekend or holiday. If the notice of appeal is not timely filed within 30 days, the appellate court does not have the authority to hear your appeal and will dismiss the appeal in civil cases and may dismiss the appeal in criminal cases.

What is a certificate of service?

A certificate of service is a statement by the person filing a pleading such as a notice of appeal that he/she has sent copies of the notice of appeal to all of the parties or their attorneys in the case. The certificate of service normally lists the name and address of all the parties or their attorneys, the date you served the document on the other party and the manner by which you served it. The certificate of service also must include the signature of the person serving the pleading. You may serve pleadings by U.S. Mail, courier service (UPS, FedEx, etc.), or hand-delivery. All pleadings filed in the trial and appellate courts must include a certificate of service.

When I file a notice of appeal, do I have to file any other document?

The party appealing the final judgment of the trial court must file an appeal bond for costs which guarantees the costs of the appeal. If the trial court did not allow you to proceed at the trial court level as a poor person or indigent, you must file an appeal bond (or a cash bond of $1000.00 if the bond is not filed) with the notice of appeal at the trial court clerk's office. However, even if

you were not allowed to proceed as a poor person or indigent at the trial level, you may file a motion with the trial court to proceed on appeal as a poor person or indigent, and if your motion is denied by the trial court, then you may file the motion with the appellate court to proceed on appeal as a poor person or indigent.

What is an appeal bond for costs?

An appeal bond for costs is a bond that ensures that the costs of the appeal will be paid by the person appealing the case if he/she loses the appeal. The costs of the appeal are the statutory costs charged by the Appellate Court Clerk's Office for processing the appeal. An appeal bond for costs must be signed by a surety, who is a person other than the party to the appeal and is a resident of the State of Tennessee. Such a bond is an "open" bond with no set amount, and the surety must either be an attorney licensed in Tennessee or a Tennessee resident with assets in Tennessee sufficient to pay the costs if necessary. The Appellate Court Clerk's Office prefers that you use the appeal bond for costs form which is attached to this Filing Guide and marked as **Attachment 2.**

What if I cannot find someone who will sign as a surety?

Instead of an appeal bond for costs, you may file a cash bond in the amount of $1000.00 payable directly to the trial court clerk. The cash bond must be a certified check or a money order. You must still fill out and file the notice of appeal form, and the trial court clerk still has to approve the cash bond for costs and sign the bottom of the notice of appeal form.

What if I am poor and cannot afford an appeal bond or litigation tax?

In order to qualify as a poor person, known as "in forma pauperis", the trial court judge must make a determination to that effect and enter an order. That order will entitle your to proceed as a poor person on appeal. However, even if the trial court allows you to proceed with the appeal because of being poor, you are still responsible for paying court costs if ordered to do so by the appellate court at the conclusion of the appeal. Furthermore, all appealing parties (even poor persons) are still required to pay the state litigation tax which is currently $13.75 even if the trial court judge determines that you are a poor person. You will also receive an invoice with instructions on payment of the litigation tax. Proceeding as a poor person only waives the requirement of filing an appeal bond. The obligation to pay court costs, should you as the appealing party lose the appeal, is not waived. If you as the appealing party are an inmate, the law requires you, as an inmate, to pay the tax or to pay 20% of the tax and include a statement of the inmates trust account for the past six months.

What is the record on appeal, and what does it contain?

The record on appeal contains the pleadings filed in the trial court, the transcript of the trial, and any exhibits introduced during the trial. The appellate court considers the record and legal briefs filed by the parties to determine whether the trial court made an error or mistake entitling you as the

appellant to any relief from the trial court judgment. Specifically, the record must contain the following:

> (1) copies, certified by the clerk of the trial court, of all papers filed in the trial court except as hereafter provided;
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> (2) the original of any exhibits filed in the trial court;
>
> (3) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected;
>
> (4) any requests for instructions submitted to the trial judge for consideration, whether expressly acted upon or not; and
>
> (5) any other matter designated by a party and properly included in the record.

Is anything excluded from being filed in the record?

Yes, unless a party designates by filing a notice of designation with the trial court clerk within 15 days of the filing of the notice of appeal, the following documents that are filed with the trial court clerk are automatically excluded from the record: (1) subpoenas or summonses for any witness or for any defendant when there is an appearance for such defendant; (2) all papers relating to discovery, including depositions, interrogatories and answers thereto, reports of physical or mental examinations, requests to admit, and all notices, motions or orders relating thereto; (3) any list from which jurors are selected; (4) trial briefs; and (5) minutes of opening and closing of court.

Once I have filed the notice of appeal, what do I do next?

If there was a trial of your case before a judge or jury with testimony from witnesses and a court reporter was present at the trial who took down all of the testimony, you should contact the court reporter to make arrangements to prepare and file the transcript with the trial court clerk. If there was a trial of your case before a judge or jury with testimony from witnesses but a court reporter was not present at the trial, you may submit a statement of the evidence recounting the testimony of the witnesses. Under such circumstances, the opposing party or his/her attorney has the opportunity to object to the statement of the evidence, and the trial court judge must resolve the issue before the statement of the evidence is filed. If there was not trial in your case and it was decided upon motions, then you should file a notice with the trial court clerk that no transcript will be filed .

If the trial court ruled against me without a trial, when must I file a notice of no transcript?

Yes, you must file a notice of no transcript with the trial court clerk within 15 days of the filing of the notice of appeal.

If the trial court ruled against me and there was a trial, when must the transcript be filed?

The transcript must be filed with the trial court clerk within 60 days of the filing of the notice of appeal.

What do I do if I need an extension of time for the court reporter to file the transcript?

As the party appealing the case, you must file a motion for extension of time for filing the transcript with the Appellate Court Clerk addressed to the Court of Appeals or Court of Criminal Appeals depending upon the court to which you appealed. The motion should be accompanied with an affidavit from the court reporter explaining the reasons for the needed extension of time for filing the transcript.

Who prepares and files the record on appeal?

The trial court clerk prepares and files the record on appeal with the Appellate Court Clerk's Office within 45 days of the filing of the transcript, statement of evidence or notice of no transcript.

When I receive a notice from the Appellate Court Clerk's Office of the filing of the record, what must I do?

Once the record is filed with the Appellate Court Clerk's Office, you will receive a notice in the mail from the Appellate Court Clerk stating that the record was filed on the specified date. You should then begin preparing to file your brief with the Appellate Court Clerk's Office. You are permitted to look at the record at the Appellate Court Clerk's Office in preparing your brief, and you may file a motion with the appellate court to which you are appealing and request permission from the appellate court to check out the record while you prepare your brief.

What must an appellant's brief contain?

The brief must contain the following sections[2]:

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[2]The information contained in the brackets is an explanation of the actual language contained in the rule setting forth the requirements for a brief.

(1) A table of contents, with references to the pages in the brief [The table of contents should list each of the below listed categories with the corresponding page in the brief. Also, if you have several sections in the argument, then the beginning of each section should be listed in the table of contents with the corresponding page];

(2) A table of authorities, including cases [alphabetically arranged], statutes and other authorities cited, with references to the pages in the brief where they are cited [The table of authorities should list all legal authorities to which you refer in your brief with the page designation next to the legal authority];

(3) A jurisdictional statement in cases appealed to the Supreme Court directly fr om the trial court indicating briefly the jurisdictional grounds for the appeal to the Supreme Court [If you appeal directly to the Supreme Court from the trial court, you must state in a single paragraph the statute or other law which gives the Supreme Court the authority to hear your appeal];

(4) A statement of the issues presented for review [The statement of issues is a listing of all the issues that you want to raise with the appellate court as a basis for either reversing the decision of the trial court or sending the case back to the trial court for a new trial];

(5) A statement of the case, indicating briefly the nature of the case, the course of proceedings, and its disposition in the court below [The statement of the case is the procedural history of your lawsuit. In most cases, it should begin with the filing of the complaint in the trial court in civil cases or the issuance the arrest warrant by law enforcement officials or issuance of the indictment by the grand jury in criminal cases and end with the filing of the notice of appeal];

(6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record [The statement of the facts is a simple statement of the facts in your case in story form. For every statement of fact, you must cite the page in the record from which that fact was entered into evidence in the case. You cannot state facts that are outside of the record. All facts must be found somewhere in the record.]

(7) An argument, which may be preceded by a summary of argument, setting forth the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the

contentions require appellate relief, with citations to the authorities and appropriate references to the record [which may be quoted verbatim] relied on [The argument contains those legal reasons why you believe that the trial court or jury made an error in your case which entitles you to either a reversal or to have the appellate court send the case back for a new trial or other relief. You should refer to the relevant statutes and cases in support of your position along with the facts in the record which support your position.];

(8) A short conclusion, stating the precise relief sought. [The conclusion sets forth the specific relief you are requesting of the appellate court such as reversal, remand for a new trial, etc.]

Samples of the first page of each of these sections are attached to this Filing Guide as **Attachment 3.**

Is there a limit on the number of pages in an appellant's brief?

Yes. The argument section in a principal brief by the appellant and appellee may not exceed 50 pages, and the argument section in reply brief by the appellant may not exceed 25 pages.

How long do I have to file an appellant's brief?

An appellant's brief must be filed with the Appellate Court Clerk's Office within 30 days of the filing of the record on appeal. It is important to remember that the 30 days is counted from the date of the filing of the record not from the date that the appellant receives notice from the Appellate Court Clerk's Office that the record was filed. In the Court of Appeals, you must file the original and 4 copies of the appellant's brief with the Appellate Court Clerk's Office. In the Court of Criminal Appeals you must file an original and 3 copies of the appellant's brief with the Appellate Court Clerk's Office. In addition, the appellant's brief must have a blue cover.

What do I do if I need an extension of time for filing my brief?

If you need an extension of time for filing a brief, you should file a motion for extension with the Appellate Court Clerk's Office before the deadline for filing your brief. Extensions are rarely granted in cases involving parental termination. A form motion for extension is attached to this Filing Guide and marked as **Attachment 4.**

How long does an appellee have to file his/her brief?

An appellee must file a brief with the Appellate Court Clerk's Office within 30 days of the filing of the Appellant's brief. It is important to remember that the 30 days is counted from the date that the appellant's brief is filed not from the date that the appellee receives the appellant's brief.

In the Court of Appeals, you must file the original and 4 copies of the appellee's brief with the Appellate Court Clerk's Office. In the Court of Criminal Appeals, you must file the original and 3 copies of the appellee's brief with the Appellate Court Clerk's Office. In addition, the appellee's initial brief must have a red cover.

As the appellant, may I file a brief in response to the appellee's brief?

Yes. The appellant may, but does not have to, file a reply brief to the appellee's brief. If you wish to file a reply brief, you must file it with the Appellate Court Clerk's Office no later than 14 days after the appellee files his/her brief with the Appellate Court Clerk's Office. In addition, the appellant's reply brief must have a gray cover.

What happens if I do not file a reply brief as the appellant?

The appellate court considers your case based upon the appellant's brief and the appellee's brief.

If I want the appellate court to grant a request relating to my appeal while my appeal is pending, how do I make such a request?

Generally, you may file a written motion asking the appellate court to enter an order granting your request. The motion must be accompanied by a memorandum of law and an affidavit if you are relying on any evidence outside the appellate record. A sample motion is attached to this Filing Guide and marked as **Attachment 5.**

Am I entitled to argue my case before the Court of Appeals or Court of Criminal Appeals?

Pro se litigants, who are not incarcerated in a prison or jail, may appear in the appellate court to argue their cases. However, inmates incarcerated in correctional facilities may not appear to argue their cases in the appellate courts. If you wish to argue an appeal, you might consider attending oral argument prior to your oral argument to see how oral arguments are conducted. The dockets setting forth the dates and times of the oral arguments for all the appellate courts in all three locations are set forth at the Tennessee Court System web site: www.tncourts.gov.

If I want to argue my case before the Court of Appeals or Court of Criminal Appeals, what must I do?

Pro se litigants, who are not incarcerated in a prison or jail who want to argue their case before the Court of Appeals or Court of Criminal Appeals must include the following words in typewritten form on the front of their brief: "Oral Argument Requested".

When will oral argument for my case be set after the filing of the appellee's brief?

There is no deadline for setting a case for oral argument established by rule or statute. As a practical matter, once the appellee's brief has been filed, the case is designated as ready for oral argument. Your case will be placed in line with other cases, and as soon as practicable, it will be set for oral argument. Certain cases, such as parental termination cases, are expedited for oral argument.

How will I receive notice of the setting of my case for oral argument?

The Appellate Court Clerk's Office will notify you as soon as your case has been set for oral argument. You are usually given several weeks' notice before the oral argument date. It is your responsibility to keep the clerk's office informed of any change of address, to ensure that you are notified of any changes regarding your case. Oral argument calendars for all appellate courts are posted on the web page of the Appellate Court Clerk's Office on the internet at www.tncourts.gov.

May I present new exhibits or testify about my case during oral argument?

No. The appellate court may not hear new testimony nor may it consider new exhibits from anyone. It is an appellate court and may only consider evidence contained in the record from the trial court along with legal arguments contained in the briefs and made at the time of oral argument.

Once the judges hear oral arguments, when will they decide my case, and how will I be notified?

There is no deadline established by statute or rule for an appellate court to issue an opinion or order in an appeal. When an appellate court issues its opinion or order, the Appellate Court Clerk's Office will notify you by mail with a copy of the opinion, judgment and/or order of the appellate court. Opinions but not orders are posted daily on the web site of the Tennessee Court System at www.tncourts.gov.

Can I appeal the decision of the Court of Appeals or Court of Criminal Appeals to the Supreme Court?

Yes. You may file an Application for Permission to Appeal with the Supreme Court from a decision of the Court of Appeals or Court of Criminal Appeals.

What is an Application for Permission to Appeal?

An Application for Permission to Appeal is a request to the Supreme Court for it to agree to hear your appeal. When you appeal a decision of a trial court to the Court of Appeals or Court of Criminal Appeals, you do so as a matter of right by filing a Notice of Appeal. On the other hand, the Supreme Court has the discretion of whether to accept or decline an Application for Permission

to Appeal. A sample Application for Permission to Appeal is set forth in **Attachment 6** of this Filing Guide.

How long after the decision of the Court of Appeals or Court of Criminal Appeals do I have to file an Application for Permission to Appeal?

You have 60 days from the filing of the opinion and judgment of the Court of Appeals or Court of Criminal Appeals to file an Application for Permission to Appeal to the Supreme Court. Failure to file the application within 60 days will result in dismissal of the application. Also, the Supreme Court will not grant any requests for extension to file an Application for Permission to Appeal.

How do I calculate the time for filing of documents with the Appellate Court Clerk's Office?

In computing any period of time prescribed or allowed by these rules, you do not include the date of the filing from which you are counting in the number of days. For example, if the appellant's brief was filed on Monday, then you begin to count the 30 days for filing the appellee's brief on Tuesday. If your due date for filing your pleading falls on a Saturday, a Sunday, a legal holiday, or on a day on which weather or other conditions have made the office of the court clerk inaccessible, then your pleading is not due to be filed until the first business day after that date. For example, if your brief is due on Saturday, you may file it timely on the next business day which is Monday unless Monday is a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation.

What are the form requirements for briefs, motions and other pleadings filed in the appellate courts?

The form requirements for all pleadings including briefs and motions in the appellate courts are: (1) opaque, unglazed 8 ½ x 11 inches white paper; (2) double-spaced text (may be single spaced for quoted matters of 50 words or more); (3) text no smaller than standard elite typewriting; (4) Side margins no smaller than 2 inches combined and top and bottom margins no smaller than 1 ½ inches; (5) numbering of pages at the bottom of each page; and (6) pages fastened together on the left side.

What is the proper way to cite to the record, transcript, exhibits, statutes and appellate court decisions?

The following is a short listing of the generally accepted way to cite to various portions of the record and legal authorities:

1. Single Volume Record - (R., 25)

2. Multi-Volume Record - (IV R., 42)

3. Transcript - (Tr. 291)

4. Multi-Volume Transcript - (IX Tr., 149)

5. Exhibit - (Ex. 35)

6. Tennessee Code - Tenn. Code Ann. § 8-21-501

7. Tennessee Appellate Court Decision - *Smith v. Jones*, 15 S.W.3d 295 (Tenn. 2000)

8. Tennessee Rules of Appellate Procedure - Tenn. R. App. P. 13

9. Tennessee Constitution - Tenn. Const. Art. II, § 2

Are the time deadlines for parental termination appeals the same as or different from regular appeals?

Effective July 1, 2004, the rules changed regarding deadlines in parental termination appeals. These changes were made to expedite these appeals, providing a balance between the parents rights and not having the child linger in the foster-care system for an unnecessarily long period of time.

The changes are as follows:

1. The Notice of Appeal in addition to the other requirements shall indicate that "the appeal involves a termination of parental rights" case.

2. The transcript is to be filed with the trial court clerk 45 days from the filing of the notice of appeal.

3. Objections to the filing of the transcript must be made within 10 days after the service of the notice of the filing of the transcript.

4. In addition to the documents that are excluded from the record as stated in Tenn. R. App. Pro. 24(a), any portion of the juvenile court file of a child dependency, delinquency or status offense case that has not been properly admitted into evidence at the termination of parental rights trial shall be excluded from the record.

5. The trial court judge now has 20 days after the expiration of the period for filing objections to the transcript to approve the transcript or the record is deemed to have been approved.

6. The trial court clerk now has 5 days from the date the judge approves the record or the date of automatic approval in which to transmit the record to the court of appeals.

7. While the appellant's brief is still due 30 days from the filing of the record with the appellate court clerk's office. The appellee's brief is now due 20 days from the filing of the appellants brief.

Where is the Appellate Court Clerk's Office located?

There are three Appellate Court Clerk's Offices located in Nashville, Knoxville and Jackson. You should file all motions, briefs and other documents in the city located in the grand division of the trial court from which you are appealing the final judgment: (1) East - Knoxville; (2) Middle - Nashville; and (3) West - Jackson. The addresses of the Appellate Court Clerk's Offices are as follows:

Nashville
Appellate Court Clerk's Office
Middle Division
Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407
Office: 615-741-2681
Fax: 615-532-8757

Knoxville
Appellate Court Clerk's Office
Eastern Division
Supreme Court Building
P.O. Box 444
Knoxville, TN 37901
Office: 865-594-6700
Fax: 865-594-6497

Shipping Address:
505 Main Street
Suite 200
Knoxville, TN 37902

Jackson
Appellate Court Clerk's Office
Western Division
Supreme Court Building
P.O. Box 909
Jackson, TN 38302-0909
Office: 731-423-5840
Fax: 731-423-6453

Shipping Address:
#6 Highway 45 By-Pass
Jackson, TN 38301

What is Voluntary Appellate Mediation, and how does it work?

In civil cases, once you have appealed your case to the Court of Appeals, you may seek to mediate the case and settle it for less than the judgment against you. In order to mediate an appeal,

all the parties must agree to the mediation. If all parties agree to the mediation, the parties must file a joint stipulation of mediation within 15 days after the date that the Appellate Court Clerk's Office transmits the voluntary appellate mediation notice to them.

Upon the filing of a joint stipulation, the appeal process will automatically be suspended for a 60 day period. That means that the time for filing of the transcript with the trial court clerk and the record with the appellate court will be suspended during the 60 day period. The parties and the mediator may obtain a 30 day extension by filing a joint stipulation of extension with the Appellate Court Clerk. The parties are responsible for selecting and paying the mediator by agreement between themselves. A list of mediators sanctioned under Supreme Court Rule 31 may be accessed at: www.tncourts.gov/geninfo/Programs/ADR/adrdir.asp.

If the voluntary mediation is successful, the parties are required to file a notice of voluntary dismissal in accordance with Rule 15(a) of the Tennessee Rules of Appellate Procedure within 5 days following the conclusion of the mediation. If the voluntary mediation is not successful, the parties are required to file a notice requesting resumption of the appeal process. If the voluntary mediation is successful as to some but not all issues, the parties are required to file a notice to that effect so as to resume the appeal process for those issues not resolved. In any event, if the parties fail to file any notice within 60 days, the Appellate Court Clerk shall return the case to the active docket. If a case is returned to the active docket, the Appellate Court Clerk shall notify all parties and the trial court clerk as to the date on which the case has been placed back on the active appellate docket.

How can I file motions, briefs or any other documents with the Appellate Court Clerk's Office?

There are several ways to file motions, briefs or other documents with the Appellate Court Clerk's Office: (1) Hand-delivery to the Appellate Court Clerk's Office; (2) U.S. Mail; (3) Courier service such as UPS or Federal Express; and (4) Telefax in certain limited circumstances.

Filings may be placed in a drop box located at then entrance of each fo the Supreme Court Buildings in the Knoxville, Nashville and Jackson locations. Filings placed in the box will be stamp filed the previous business day. Example: If a filing is placed in the box at 8:00 p.m. on September 5th, it will be retrieved on September 6th at 8:00 a.m. but the filing will be stamped filed for September 5th.

If I lose the appeal and I am a poor person or indigent, do I have to pay the Appellate Court Clerk's costs for the appeal?

If the appellate court assesses or taxes costs against you in the judgment, then you are obligated to pay the costs even if you were permitted to proceed on the appeal as a poor person or indigent. Status as a poor person or indigent only entitles you to proceed on appeal without having to file an appeal bond.

What are the business hours of the Appellate Court Clerk's Offices?

The Appellate Court Clerk's Offices are open from 8:00 a.m. to 4:30 p.m. (Local Time) on Monday through Friday except for State Holidays which are as follows:

Holiday	Date
New Year's Day	January 1
Martin Luther King, Jr. Day	3rd Monday in January
Presidents' Day	3rd Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Columbus Day[3]	2nd Monday in October
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

It should be noted that historically, the Governor has declared certain additional days at Thanksgiving and Christmas as holidays which the Appellate Court Clerk's Office follows. Therefore, it is advisable to contact the Appellate Court Clerk's Office if you are filing a document at or near those holidays.

[3]By law, the Governor may substitute the Friday after Thanksgiving for Columbus Day.

Time-Line For An Appeal[4]

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Appellant	Notice of Appeal	30 days after entry of final order	Trial court clerk	4(a)
Appellant	Cost bond - Open with sufficient sureties, $1000 cash or pauper's oath	30 days after entry of final order	Trial court clerk	6, 9 & 10
Trial Court Clerk	Copy of Notice of Appeal in Civil & Criminal cases	7 days after Notice of Appeal filed	Appellate Court Clerk	5
Appellant	Designation of record if less than full record is needed	15 days after Notice of Appeal	Trial court clerk	24(a)
Appellee	Designation of record if any, in addition to Appellant	15 days after Appellant's designation	Trial court clerk	24(b)
Appellant	Filing of certified transcript with proof of service to Appellee	60 days after filing Notice of Appeal	Trial court clerk	24(c)
Appellant	Statement of evidence when no transcript of evidence is available	60 days after filing Notice of Appeal	Trial court clerk	24(d)
Appellant	Notice that no transcript of the evidence or statement of the evidence to be filed	15 days after the Notice of Appeal	Trial court clerk	24(d)

[4]This is a general time line for most cases; however, the time line may be different for certain specific appeals. For example, the time-line for parental termination appeals is on an expedited basis and is controlled by Tenn. R. App. P. 8A.

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Trial Court Judge	Approval of the Transcript of the Evidence or the Statement of the Evidence	30 days after the 15 day objection period expires	Trial court clerk	24(f)
Trial Court Clerk	Appellate Record	45 days after the Transcript of the Evidence, Statement of the Evidence, or Notice of No Transcript filed	Transmit to Appellate Court Clerk	25(a) & (b)
Trial Court Clerk	Extension of time for completion of the record	45 day period - No more than 60 days after filing Transcript of the Evidence or Statement of the Evidence	Appellate Court Clerk	25(d)
Appellate Court Clerk	Notice of Filing of Record	Upon Receipt and Filing of Record	Trial court clerk and parties	26(a)
Appellant	Appellant's Brief	30 days after the filing of the record	All Parties	29(a)
Appellee	Appellee's Brief	30 days after the filing of Appellant's Brief	All Parties	29(a)
Appellant	Appellant's Reply Brief (Optional)	14 days after the filing of Appellee's Brief	All Parties	29(a)
Appellate Court Clerk	Notice of Oral Argument scheduled	Upon setting of the appeal for oral argument	All Parties	35(b)

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Appellate Court Clerk	Opinion of the Intermediate Appellate Court and Judgment	Date the Opinion and Judgment filed	All Parties	38
Appellate Court Clerk	Application for Permission to Appeal (TRAP 11)	60 days after entry of judgment of the Int. App. Court	All Parties	11(b)
Appellate Court Clerk	Mandate (Certified copy of Opinion and Judgment)	61 days after entry of the judgment or immediately after denial of TRAP 11 Application by the Supreme Court	Trial Court Clerk & all Parties	42
Appellate Court Clerk	Response in Opposition to TRAP 11 Application	15 days after filing of TRAP 11 Application to the Supreme Court	All Parties	11(d)
Appellate Court Clerk	Order Granting TRAP 11 Application	Upon issuance by Supreme Court	All Parties	11(e)
Appellate Court Clerk	Appellant's Brief in the Supreme Court	At time of filing the TRAP 11 Application or 30 days after the Supreme Court grants the TRAP 11 Application	All Parties	11(f)
Appellate Court Clerk	Appellee's Brief in the Supreme Court	30 days after filing of Appellant's Brief	All Parties	11(f)
Appellate Court Clerk	Appellant's Reply Brief in the Supreme Court (Optional)	14 days after filing of Appellee's Brief	All Parties	11(f)

Person Filing	Item Filed	Time Deadline	Location Filed	TRAP Rule
Appellate Court Clerk	Notice of Oral Argument scheduled	Upon setting of the appeal for oral argument	All Parties	35(b)
Appellate Court Clerk	Opinion of the Supreme Court and Judgment	Date the Opinion and Judgment filed	All Parties	38
Appellate Court Clerk	Mandate (Certified copy of Opinion and Judgment)	11 days after entry of the judgment	Trial Court Clerk & all Parties	42

Color Chart for Briefs

Court	Appellant's Brief	Appellee's Brief	Reply Brief	Amicus Brief	Motions w/ Affidavit	Petitions to Rehear
Court of Appeals	Original + 4 copies (Blue cover)	Original + 4 copies (Red cover)	Original + 4 copies (Gray cover)	Original + 4 copies (Green cover)	Original + 1 copy (No cover)	Original + 3 copies (No cover)
Court of Criminal Appeal	Original + 3 copies (Blue cover)	Original + 3 copies (Red cover)	Original + 3 copies (Gray cover)	Original + 3 copies (Green cover)	Original + 3 copies (No cover)	Original + 3 copies (No cover)
Supreme Court	**Application**	**Response**				
Rule 11 (Application)	Original + 6 copies (Blue cover preferred)	Original + 6 copies (Red cover preferred)				
	Appellant's Brief	**Appellee's Brief**	**Reply Brief**	**Amicus Brief**	**Motions w/ Affidavits**	**Petitions to Rehear**
Merits' Briefs	Original + 5 copies (Blue cover)	Original + 5 copies (Red cover)	Original + 5 copies (Gray cover)	Original + 5 copies (Green cover)	Original + 1 copy (No cover)	Original + 5 copies (No cover)
Workers' Comp Panel (Supreme Court)	Original + 3 copies (Blue cover)	Original + 3 copies (Red cover)	Original + 3 copies (Gray cover)			Review by Entire SCt Original + 5 copies

Forms

and

Samples

ATTACHMENT 1
NOTICE OF APPEAL FORM
NOTICE OF APPEAL

Style

_____

v.

_____

Notice

Notice is given that _____
[List name(s) of all appealing party(ies) on separate sheet if necessary]

appeals the final judgment(s) of the _____ Court of _____
[List the circuit, criminal, chancery or juvenile court] [List the County]

County filed on _____ to the _____.
[List the date(s) the final judgment(s) was filed in the trial court clerk's office] [Name the Court of Appeals (civil), Court of Criminal Appeals (criminal), or Supreme Court (Workers' Compensation)]

Additional Information

Type of Case [Check the most appropriate item]

_____ Civil
_____ Criminal
_____ Post Conviction
_____ Workers's Compensation
_____ Death Penalty
_____ Parental Termination
_____ Habeas Corpus
_____ Juvenile
_____ Dependent and Neglect
_____ Other (Specify: _____)

Trial Court Number _____

Trial Court Judge _____

Civil Appeal Cost Bond [Check the most appropriate item]

_____ Filed in trial court with copy attached
_____ Indigent with copy of indigency order or affidavit attached
_____ Cash bond filed in trial court with copy attached

Criminal Appeal Appearance Bond [Check the most appropriate item]

_____ Order appointing counsel with copy attached
_____ Appearance bond with copy attached
_____ Incarcerated pending appeal

TDOC Number [Appellant is an inmate] _____

List of Parties

Appellant: _____ At trial: ❑ Plaintiff ❑ Defendant
Party's Address: _____
Party's Telephone: _____
Attorney's Name: _____ BPR#: _____
Attorney's Address: _____ Phone: _____

**** Attach an additional sheet for each additional Appellant ****

Appellee(s)

Appellee: _____ At trial: ❑ Plaintiff ❑ Defendant
Appellee's Address: _____
Attorney's Name: _____ BPR#: _____
Attorney's Address: _____ Phone: _____

**** Attach an additional sheet for each additional Appellee ****

CERTIFICATE OF SERVICE

I, _____, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class, United States Mail, postage prepaid, to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on this the _____ day of _____, 20__.

_____
[Signature of appellant or attorney for appellant]

[Revised: 5-22-09]

ATTACHMENT 2
APPEAL BOND FOR COSTS FORM
APPEAL BOND FOR COSTS

I (we), _____, **principal(s)/ Appellant(s)**, and

I (we), _____, the **surety(ies)/ Attorney,** bind myself/ourselves for the costs of appeal in:

_____

vs. **Cause No.** _____

_____

_____, ***or***
PRINCIPAL/APPELLANT (Signature)

_____ **by** _____
PRINCIPAL (Print) **ATTORNEY** (Signature)

PRINCIPAL'S ADDRESS: _____

_____

PRINCIPAL(S) SOCIAL SECURITY NO.: _____

(street address only; ***NO*** *P.O. boxes;* ***NO*** *in care of principal's attorney)*
(Social Security Numbers Required for individual principal(s) per Tenn. Code Ann. § 25-1-108)

_____ by _____ **SURETY**
(Print) (Signature)

SURETY'S ADDRESS: _____

_____

(street address only; ***NO*** *P.O. boxes)*

IF THE PRINCIPAL(S) PAY ALL COSTS OF APPEAL, THEN THIS OBLIGATION IS VOID. IF PRINCIPAL(S) FAIL(S) TO PAY, THEN THE SURETY IS OBLIGATED TO PAY ALL COSTS OF APPEAL.

***IF YOU DO NOT HAVE A SURETY TO SIGN YOUR BOND FOR COSTS** *: A cash deposit of $1,000.00 is deemed sufficient instead of a surety bond, except as otherwise required by the trial court clerk and/or the Appellate Court Clerk.

A deposit of $_____ in cash has been made by _____ with _____ of the _____ court clerk's office on the ____ day of _____, ____.

Approved by: _____
Trial Court Clerk or Appellate Court Clerk

ATTACHMENT 3 - BRIEF

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

NISSAN NORTH AMERICA, INC., Successor by Merger to NISSAN MOTOR MANUFACTURING COMPANY,	)	
Plaintiff/Appellee,	)	
v.	)	Case No. M2003-00813-COA-R3-CV
LINDA J. HAISLIP, Marshall County Assessor of Property, et al.,	)	
Defendants/Appellants.	)	

Rule 3 Appeal from the Final Judgment of the Chancery Court for Davidson County, Case No. 02-1614-III

BRIEF OF APPELLANT STATE BOARD OF EQUALIZATION

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

MARY ELLEN KNACK (#14927)
Assistant Attorney General
Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-7404

[Oral Argument Requested]

TABLE OF CONTENTS

PAGE

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the Chancery Court erred in holding that Nissan was not liable for ad valorem taxes on tangible personal property, *i.e.* special tools, that were owned by Nissan but that were in the possession of its contractors in Marshall and Lawrence counties based on the Chancery Court's ruling that the property was "leased" to the contractors.

STATEMENT OF THE CASE

In the underlying administrative proceedings, the State Board of Equalization was required to determine whether the Appellee, Nissan North America, Inc., was subject to ad valorem taxes on personal property that was owned by Nissan but that was located at the premises of its contractors in Marshall and Lawrence counties. (Administrative Record (A.R.) vol. I, p. 5). The property consisted of certain tools that were located at the premises of Kantus Corporation in Marshall County and Excel Industries in Lawrence County. (A.R. vol. I, 74-75). After the administrative judge assigned to the case issued an Initial Decision and Order ruling that Nissan was liable for payment of ad valorem taxes on the tools, Nissan appealed this determination to the Board's Assessment Appeals Commission. (A.R. vol. I, pp. 92-94, 105-11).

The Assessment Appeals Commission likewise ruled that Nissan was liable for the taxes. (A.R. vol. I, pp. 5-8). In reaching this decision, the Appeals Commission rejected Nissan's argument that Nissan should not be assessed for the tools because the tools were "leased" to its contractors within the meaning of Tenn. Code Ann. § 67-5-904. (A.R. vol. I, p. 6). The Commission's decision became final on March 31, 2002, when the Board issued Official Certificates certifying ad valorem assessments for the disputed property. (A.R. vol. I, pp. 1-4).

STATEMENT OF FACTS

In the administrative proceedings before the Board, the parties stipulated to the pertinent facts. (A.R. vol. I, pp. 73-84). Nissan owns a plant in Smyrna, Rutherford County, Tennessee, where it manufactures motor vehicles. (A.R. vol. I, p. 73). As part of its normal business operations, Nissan contracts with various suppliers, including Kantus Corporation and Excel Industries (the "Vendors"), to manufacture and supply parts that Nissan uses to manufacture its automobiles. (A.R. vol. I, pp. 73-74). Kantus operates a manufacturing facility in Marshall County, and Excel operates a facility in Lawrence County. (A.R. vol. I, p. 74). The tangible personal property at issue was located at these facilities. (A.R. vol. I, p. 75).

During the tax years in question, neither Nissan nor the Vendors reported as tangible personal property "special tools" that were owned by Nissan and located at the Vendors' manufacturing facilities. (A.R. vol. I, p. 76). These "special tools" consisted of molds, patterns, dies, jigs, fixtures, and gauges that were used by the Vendors to manufacture parts for Nissan. (A.R. vol. I, pp. 74-75). In the typical arrangement between the parties, Nissan established specifications for the tools, which the Vendors designed and manufactured according to these specifications. (A.R. vol. I, pp. 74-75). Nissan then purchased the tools from the Vendors and remained the owner of the tools throughout their useful life. (A.R. vol. I, pp. 74-76).

ARGUMENT

NISSAN IS LIABLE FOR AD VALOREM TAXES ON THE SPECIAL TOOLS BECAUSE THE TOOLS WERE OWNED BY NISSAN, WERE USED OR HELD FOR USE IN NISSAN'S BUSINESS, AND WERE NOT LEASED TO THE VENDORS.

In Tennessee, the general rule is that all property is assessable against the owner of that property. *See* Tenn. Code Ann. § 67-5-502(a) (1998) (providing that "[t]he function of assessment shall be to assess . . . [a]ll property . . . to the person or persons owning or claiming to own the same"). To this end, the property tax statutes require business taxpayers, like Nissan, to annually report "all tangible personal property owned by the taxpayer and used or held for use in [the taxpayer's] business or profession including, but not limited to, furniture, fixtures, machinery and equipment, all raw materials, [and] supplies." Tenn. Code Ann. § 67-5-903(a) (1998).

An exception to the general rule arises in cases involving "leased" personal property. The property tax statutes provide that "leased personal property shall be classified according to the lessee's use and assessed to the lessee." Tenn. Code Ann. § 67-5-502(c) (1998); *see also* Tenn. Code Ann. § 67-5-901(b) (1998) ("[l]eased personal property in the possession of the lessee shall be classified and assessed according to the use of the lessee"). Thus, leased personal property is assessed to the lessee rather than to the property's owner.

In the present case, it was undisputed that Nissan was the owner of the special tools that form the subject of this dispute. (A.R. vol. I, pp. 75-76). It likewise was undisputed that these tools were used as directed by Nissan to manufacture parts used in Nissan's production of motor vehicles. (A.R. vol. I, p. 73-76).

CONCLUSION

For these reasons, the State Board of Equalization requests this Court to reverse the Chancery Court's order ruling that Nissan was not assessable for the tools and to reinstate the Board's decision that Nissan is liable for ad valorem taxes on the tools.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

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Counsel for State Board of Equalization

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Brief of Appellant State Board of Equalization has been served upon counsel for Appellee by U.S. Mail, postage prepaid, addressed to:

Martha J. Trammell
NISSAN NORTH AMERICA, INC.
983 Nissan Drive
Smyrna, Tennessee 37167

Timothy J. Peaden
Mary T. Benton
ALSTON & BIRD, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

on this the _____ day of July, 2003.

_____
MARY ELLEN KNACK
Assistant Attorney General

ATTACHMENT 4 - FORM MOTION FOR EXTENSION

IN THE _____COURT FOR THE STATE OF TENNESSEE

[Insert which appellate court]

_____SECTION AT_____

[Insert which Grand Division] [Insert which city]

_____,)
[Insert Name of Party])
Plaintiff/_____,)
[Insert Appellant or Appellee])
Appeal No. _____)
)
[Insert Appeal No.])
v.)
)
_____,)
[Insert Name of Party])
Defendant/_____,)
[Insert Appellant or Appellee]

Motion for Extension of Time for Filing Brief

_____requests ____ days extension of time within which to file a
[Insert Appellant/Appellee]

brief from the original due date of _____, in this case.

This is Movant's: ___ 1st : ___ 2nd : ___ (Other) request for extension in this case.

Opposing Counsel: ___ **Does Not** object to this motion.
[check one]

___ **Objects**

___ **Called, unable to reach and left message**

Reason (Good Cause) for extension: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Affidavit

I, _____, swear and/or affirm that all of the facts stated in this motion
[Insert Appellant/Appellee or counsel]
are true and correct to the best of my knowledge.

_____
[Signature of Appellant/Appellee or counsel]

_____
[Print Name of Appellant/Appellee or counsel]

Sworn to and subscribed before me
this the ___ day of _____, 20__.

_____
[Signature of Notary Public]

_____
[Printed Name of Notary Public]

Certificate of Service

I, _____, certify that a true and exact copy of the foregoing
[Insert name of appellant/appellee or counsel]
motion has been forwarded by _____ on _____ day of
[insert U.S Postal Service, Courier Service, or Hand-delivery, etc]
_____, 20__ to the following parties and/or their counsel of record with their full-mailing

address: _____
_____
_____
_____
_____

_____
[Signature of appellant/appellee or counsel]

ATTACHMENT 5 - SAMPLE MOTION

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

ANR PIPELINE CO.,		
	)	
Petitioner-Appellant,	)	
v.	)	No. M2001-01119-COA-R12-CV
TENNESSEE STATE BOARD OF EQUALIZATION,	)	
	)	
	)	
Respondent-Appellee.	)	

MOTION FOR LEAVE OF COURT OF APPEALS TO CORRECT CLERICAL MISTAKE IN FINAL DECISION AND ORDER OF TENNESSEE STATE BOARD OF EQUALIZATION AND TO SUPPLEMENT RECORD ON APPEAL WITH CORRECTED ORDER

Respondent-Appellee Tennessee State Board of Equalization, through the Office of the Attorney General, moves the Court for leave to correct a clerical mistake in the Board's Final Decision and Order dated March 14, 2001, and to supplement the record on appeal with the Board's corrected order.

The caption of the March 14, 2001, Final Decision and Order indicated that Petitioner-Appellant Trunkline Gas Company's appeal covered the tax years 1997-2000. (Administrative Record (A.R.) vol. I, pp. 13). The administrative record filed with the Court by the Board, however, indicates that Trunkline's appeal covered only the tax years 1997-1999. Trunkline's appeals for these three tax years appear at the following pages of the administrative record: Tax Year 1997, vol. XIV, pp. 1940-41; Tax Year 1998, vol. XIV, pp. 1903-04; and Tax Year 1999, vol. X, pp. 1361-62. Appeals filed for tax year 2000 by the various pipeline companies did not include an appeal by Trunkline. (A.R. vol. III, pp. 323-36). Accordingly, the caption of the Board's Final Decision and Order should be corrected to reflect that Trunkline's appeal applied only to tax years 1997, 1998, and 1999.

A Supplemental Record containing a Corrected Final Decision and Order setting forth this correction is included with this Motion. Counsel for the Board has contacted counsel for Trunkline Gas Company, Stephen D. Goodwin, who indicated that he did not represent Trunkline for tax year 2000 and that he was not authorized to state whether or not Trunkline filed an appeal for that year. Trunkline's counsel did agree, however, that his representation of Trunkline in the underlying administrative proceeding covered only tax years 1997, 1998, and 1999.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter

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Counsel for Respondent-Appellee
Tennessee State Board of
Equalization

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Motion has been served by placing same in the U.S. Mail, postage prepaid, to all counsel of record on this the _____ day of February, 2002.

_____

MARY ELLEN KNACK
Assistant Attorney General

ATTACHMENT 6 - SAMPLE APPLICATION FOR PERMISSION TO APPEAL

IN THE SUPREME COURT OF TENNESSEE

JOHN WESLEY GREEN, Plaintiff/Appellee, v. EDNA L. GREEN, Defendant/Appellant. CHAMPS-ELYSEES, INCORPORATED, Plaintiff in Intervention/ Appellant, v. JOHN WESLEY GREEN, Defendant in Intervention/Appellee.	)	Appeal No. M2006-02119-COA-R3-CV On Appeal from the Chancery Court for Davidson County, Tennessee Case No. 05-2817-II Honorable Carol L. McCoy, Chancellor

APPLICATION FOR PERMISSION TO APPEAL

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Emily R. Walsh (No. 24775)
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(615) 252-2360

Attorneys for Edna L. Green and Champs-Elysees, Incorporated

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

DOCKETED CASES

STATE STATUTES

MISCELLANEOUS

JUDGMENT OF COURT OF APPEALS

The Court of Appeals issued its Opinion in this case on March 5, 2008 (Appendix 1). No petition for rehearing was filed.

QUESTION PRESENTED FOR REVIEW

Whether reliance is an element of a cause of action under Tenn. Code Ann. § 48-2-122(b)(1).

RELEVANT FACTS

A. Proceedings Before the Trial Court

1. This case involves the sale of stock in a closely-held Tennessee company, Champs-Elysees, Incorporated. This case arises out of John Wesley Green's ("John Green") attempt to purchase his mother's shares in Champs-Elysees, Incorporated ("Champs-Elysees").

2. In early October 2005, John Green approached his mother, Edna Green, about purchasing her stock in Champs-Elysees. R2. 253. In connection with this proposed purchase, John Green represented to Mrs. Green that if she sold her stock to him, AmSouth Bank "would remove [her] as a guarantor on [Champs-Elysees'] substantial line of credit." R1. 2. In fact, Edna Green was not a signatory to any guaranty in favor of AmSouth Bank with respect to Champs-Elysees' line of credit. R2. 269. Nevertheless, on October 27, 2005, after having made this false representation, John Green presented a "Bill of Sale" (R1. 5.) to his mother and drove her to a local bank to sign it in the presence of a notary. R2. 259. The "Bill of Sale" purported to transfer Mrs. Green's stock in Champs-Elysees to John Green for $8,000. R1. 5. At the time Edna Green signed the "Bill of Sale," John Green gave her a check for $2,000. R2. 261.

3. The very next day, Edna Green approached her son and handed him a written notice rescinding the transaction, along with the check in the amount of $2,000 which he had given her. R2. 264. John Green refused to accept Mrs. Green's rescission. R2. 264.

4. On November 14, 2006, John Green brought this declaratory judgment action against his mother to enforce the October 27, 2005, sale of stock evidenced by the "Bill of Sale." In his Complaint, John Wesley Green sought a declaration that a "Bill of Sale" signed by his mother and purporting to convey to John Wesley Green her shares in Champs-Elysees was valid and enforceable. R1. 1-4.

5. Mrs. Green defended the action on the basis that the sale should be rescinded pursuant to Tenn. Code Ann. § 48-2-122(b)(1). In violation of Tenn. Code Ann. § 48-2-121(a)(2), John Green made an untrue statement of material fact in connection with the sale of stock in Champs-Elysees. Specifically, John Green told his mother that "the bank [AmSouth Bank] would remove [her] as a guarantor on a substantial line of credit. . ." if she sold her stock. R1. 2. This statement was untrue. Mrs. Green was not a guarantor on the Company's line of credit with AmSouth Bank. R1. 85-90.

6. Because there was no dispute that John Green made the untrue statement, or that it was material (*see* ***Patel v. Bayliff***, 121 S.W.3d 347, 353 (Tenn. App. 2003)), Mrs. Green moved the trial court to rescind the sale pursuant to Tenn. R. Civ. P. 56. R2. 217-19. John Green opposed Mrs. Green's motion for summary judgment, *inter alia*, on the basis that a genuine issue existed as to whether Mrs. Green relied upon the untrue statement. R4. 479-80. Relying upon the plain language of Tenn. Code Ann. § 48-2-122(b)(1), Mrs. Green countered that reliance was not an element of a claim for rescission under Section 48-2-122(b)(1), and summary judgment was therefore appropriate.

7. The trial court agreed that reliance was not an element of a claim under Section 48-2-122(b)(1) and granted summary judgment in favor of Mrs. Green. R4. 486-90.

B. The Court of Appeals Opinion

8. John Green filed a Notice of Appeal on September 16, 2006. R1. 659-60. On appeal, he argued that the trial court erred in ruling that reliance was not an element of a claim under Section 48-2-122(b)(1).

9. On March 5, 2008, the Court of Appeals issued its Opinion. Appendix 1. The Court of Appeals recognized that the question was one of first impression in Tennessee but held – contrary to the trial court – that reliance is an element of a claim for rescission under

Section 48-2-122(b)(1). *Id.* at *5. In so holding, the Court did not focus upon the language of Section 48-2-122(b)(1), but instead found that several decisions, most particularly ***Constantine v. Miller Indus., Inc.***, 33 S.W.3d 809 (Tenn. App. 2000), "offered guidance as to the proper interpretation of [Section 48-2-122(b)(1)]."[1]

10. Because the Court of Appeals determined that "reliance is required for a cause of action under T.C.A. § 48-2-122(b)(1)" (*Id.* at *5), the Court held that "Mrs. Green was not entitled to judgment as a matter of law," and reversed the trial court's entry of summary judgment. *Id.* at *6.

[1] ***Constantine*** does not mention or refer to Section 48-2-122(b)(1), but instead deals with Section 48-2-122(c)(1)

REASONS SUPPORTING REVIEW

THIS COURT SHOULD REVIEW THIS CASE TO SETTLE AN IMPORTANT QUESTION OF LAW: WHETHER RELIANCE IS AN ELEMENT OF A CLAIM UNDER TENN. CODE ANN. § 48-2-122(b)(1).

This case presents a question of first impression in Tennessee: is reliance a required element of a claim under Tenn. Code Ann. § 48-2-122(b)(1). The answer to this question should be "no," because Section 48-2-122(b)(1) sets out the elements which must be proven to establish a claim thereunder, and reliance is not among them. Despite the clarity of Section 48-2-122(b)(1), however, the Court of Appeals answered this question "yes." The Court of Appeals held "that reliance is required for a cause of action under T.C.A. § 48-2-122(b)(1)." Appendix 1, *5. This holding, respectfully, contravenes the plain meaning of the Tennessee Securities Act of 1980 and adds to Section 48-2-122(b)(1) an element which the Legislature intentionally omitted. This Court should accept review of this case and settle this important question of law.

1. Reliance Is Not an Element of a Claim Under Tenn. Code Ann. § 48-2-122(b)(1).

The Tennessee Securities Act of 1980 (the "Act"), Tenn. Code Ann. § 48-2-101, *et seq.*, governs the purchase and sale of securities in Tennessee. *See* Tenn. Code Ann. § 48-2-124(a). In Tennessee, a purchaser of stock is not permitted to misrepresent a material fact in connection with the purchase. Specifically, the Act provides:

> (a) ***It is unlawful for any person, in connection with the*** offer, sale or ***purchase of any security*** in this state, directly or indirectly, ***to***:
>
> . . .
>
> (2) ***Make any untrue statement of a material fact*** or omit to state a material fact necessary in order to make the statements

> made, in light of the circumstances under which they are made, not misleading. . ..

Tenn. Code Ann. § 48-2-121(a)(2) (emphasis added). The Act provides the seller a remedy against a purchaser who unlawfully makes such an untrue statement. Section 48-2-122 provides in relevant part:

> (b)(1) Any person who purchases a security in violation of § 48-2-121(a) (the seller not knowing of the violation of § 48-2-121(a), and who does not carry the burden of proof of showing that the purchaser did not know and in the exercise of reasonable care could not have known of the violation of § 48-2-121(a)) shall be liable to the person selling the security to the purchaser to return the security, plus any income received by the purchaser thereon, upon tender of the consideration received. . ..

Read together, Sections 48-2-121(a)(2) and 48-2-122(b)(1) provide a claim for rescission to a seller of a security where (a) the purchaser makes an untrue statement of material fact in connection with the purchase or sale of a security; (b) the seller does not know that the statement is true; and (c) the purchaser fails to prove that he did not know (and could not in the exercise of reasonable care have known) that his statement was untrue. Section 48-2-122(b)(1) expressly provides the claim for rescission and expressly sets forth each element of the claim. The Tennessee General Assembly did not include reliance as an element of such a claim. To the contrary, Section 48-2-122(b)(1) permits a seller to rescind the sale so long as the seller did not know of the purchaser's violation of Section 48-2-121(a) (in this case that the purchaser's statement was untrue). The General Assembly could not have been more clear: a seller's claim for rescission depends upon the seller's knowledge, not upon the seller's reliance.

2. <u>The Legislature Intended that Reliance Not Be An Element.</u>

The General Assembly's omission of reliance as an element for a claim under Section 48-2-122(b)(1) was intentional. Tenn. Code Ann. § 48-2-121(a)(1) and § 48-2-122 closely follow Section 10(b), and Rule 10b-5 thereunder, of the Securities Exchange Act of 1934

and Section 12(2) of the Securities Act of 1933. Section 48-2-122(c)(1), not at issue here, provides a private right of action for the equivalent of a Rule 10b-5 cause of action.[2] Such a cause of action requires proof of willful misconduct ("scienter"), reliance, causation, and damages. *See* Section 48-2-122(c)(1); and ***Constantine***, 33 S.W.3d at 813. These same elements must be established to recover under Rule 10b-5 as well. The remedy for violation of Section 48-2-122(c)(1) is the recovery of monetary damages, as is the case in an action under Rule 10b-5.

Sections 48-2-122(a)(1) and (b)(1), by contrast, are equivalent to a federal action under Section 12(2) of the Securities Act of 1933.[3] A claim under Section 12(2) does not require

---

[2] Section 48-2-122(c)(1) provides:

> Any person who willfully engages in any act or conduct which violates § 48-2-121 shall be liable to any other person (not knowing that any such conduct constituted a violation of § 48-2-121) who purchases or sells any security at a price which was affected by the act or conduct for the damages sustained as a result of such act or conduct unless the person sued shall prove that the person sued acted in good faith and did not know, and in the exercise of reasonable care could not have known, that such act or conduct violated § 48-2-121.

[3] Section 12(2) provides:

> Any person who—
>
> (2) offers or sells a security. . . [by means of] oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such an untruth or omission, shall be liable to the person purchasing such security from him. . . to recover the consideration paid for such security with interest thereon. . . upon the tender of such security.

Section 48-2-122(a)(1) provides:

> Any person who:
>
> (B) Sells a security in violation of § 48-2-121(a) (the purchaser not knowing of the violation of § 48-2-121(a), and who does not carry the burden of proof of showing that the person did not know and in the exercise of reasonable care could not have known of

(footnote continued on following page ...)

proof of scienter, reliance, causation, or damages. *See, e.g.*, ***In re Worldcom, Inc. Sec. Litig.***, No. 02 Civ 3288 DLC, 2005 WL 375315 (S.D.N.Y. Feb. 17, 2005) (reliance is not an element of a claim under Section 12(2)). "It is well settled that Section 12(2) imposes liability without regard to whether the buyer relied on the misrepresentation or omission." ***Sanders v. John Nuveen & Co., Inc.***, 619 F.2d 1222, 1225 (7th Cir. 1980). "Plaintiffs seeking to recover under Section 12(2) must only prove 'that the. . . defendants misrepresented or omitted material facts.'" ***Currie v. Cayman Res. Corp.***, 835 F.2d 780, 782-83 (11th Cir. 1988).

This was also the case in 1980 when the Tennessee General Assembly enacted the Tennessee Securities Act. *See, e.g.*, Kaminsky, ***An Analysis of Securities Litigation Under Section 12(2) and How It Compares With Rule 10b-J***, 13 Hous. L. Rev. 231, 264-265 (1976). As stated in ***General Electric Credit Corp. v. M.D. Aircraft Sales, Inc.***, 266 N.W.2d 548, 551 (S.D. 1978), "It is well-settled case law that reliance on misrepresentations or omissions need not be proved in order to prove a violation of [Section 12(2) of the 1933] Act" (*citing* ***Hill York Corp. v. Am. Int'l. Franchises, Inc.***, 448 F.2d 680, 695 (5th Cir. 1971); ***Johns Hopkins Univ. v.***

(... footnote continued from previous page)

> the violation of § 48-2-121(a)); shall be liable to the person purchasing the security from the seller to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, less the amount of any income received on the security, upon the tender of the security, or, if the purchaser no longer owns the security, the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition.

Section 48-2-122(b)(1), the provision at issue here, provides the same right of action to a seller:

> Any person who purchases a security in violation of § 48-2-121(a) (the seller not knowing of the violation of § 48-2-121(a), and who does not carry the burden of proof of showing that the purchaser did not know and in the exercise of reasonable care could not have known of the violation of § 48-2-121(a)) shall be liable to the person selling the security to the purchaser to return the security . . . upon tender of the consideration received . . .

Section 12(2) and its Tennessee equivalents Sections 48-2-122(a)(1) and (b)(1) provide a negligence-based remedy of rescission to address a violation of each respective section.

Hutton, 422 F.2d 1124, 1129 (4th Cir. 1970); and *Gilbert v. Nixon*, 429 F.2d 348, 356 (10th Cir. 1970)).

The Tennessee General Assembly is presumed "to know the state of the law at the time it passes legislation." *Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn. 1994); and *Neff v. Cherokee Ins. Co.*, 704 S.W.2d 1, 4 (Tenn. 1986). Thus, when it patterned Section 48-2-122(a)(1) and (b)(1) upon Section 12(2) of the 1933 Act, the legislature knew that reliance was not an element of a claim under that Section. Nothing in the language of Section 48-2-122(b)(1) remotely suggests that the legislature intended to include reliance as an element necessary to rescind a sale under Section 48-2-122(b)(1). To the contrary, the language of Section 48-2-122(b)(1) clearly and unambiguously sets forth what elements a seller must establish in order to rescind a sale of securities. A requirement of reliance is plainly absent.

The absence of such a requirement is also supported by the Uniform Securities Act of 1956. Section 12(2) of the Securities Act of 1933 provided the model for Section 410(a)(2) of the Uniform Securities Act of 1956, as amended. Section 410(a)(2) of the Uniform Act provides:

> Any person who. . . offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person buying the security from him. . .

The Comments to the Uniform Securities Act note that Section 410(a)(2) is "almost identical" with Section 12(2) of the 1933 Act. *See* Official Comments to § 410(a), Clause 2, Loss, ***Commentary on the Uniform Securities Act***, p. 146 (1976). Following federal precedent, the

primary draftsmen of Section 410(a)(2) noted that reliance was not an element of recovery under Section 410(a)(2). *Id.* at 147-48.

Many states which, like Tennessee, have adopted language similar to Section 12(2) of the 1933 Act and to Section 410(a)(2) of the Uniform Securities Act have expressly noted its similarity to Section 12(2) of the Securities Act of 1933, and have expressly held that reliance is not a requirement. Indiana, for example, codified Section 410(a)(2) as Indiana Code § 23-2-1-19(b), which provides:

> A person who purchases a security in violation of this chapter, and who does not sustain the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the violation, is liable to any other party to the transaction who did not knowingly participate in the violation or who did not have, at the time of the transaction, knowledge of the violation.

Like Tenn. Code Ann. § 48-2-122(b)(1), this provision provides a seller with a claim for rescission against a buyer who, negligently or otherwise, makes "an untrue statement of a material fact." *See* ***Arnold v. Dirrim***, 398 N.E.2d 426, 435 (Ind. App. 1979). Reliance is not an element of a seller's claim under this provision. ***Id.***; and ***Kelsey v. Nagy***, 410 N.E.2d 1333 (Ind. App. 1980). *See also* ***Marram v. Kobrick Offshore Fund, Ltd.***, 809 N.E.2d 1017, 1027 (Sup. Ct. Mass. 2004).

3. In Its Opinion, the Court of Appeals Violated Basic Principles of Statutory Construction.

When construing a statute, a court's duty is to ascertain and give effect to the intent and purpose of the legislature. ***Lipscomb v. Doe***, 32 S.W.3d 840, 844 (Tenn. 2000); ***Freeman v. Marco Transp. Co.***, 27 S.W.3d 909, 911 (Tenn. 2000). "When the statutory language is clear and unambiguous, [a court] must apply its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute's application." ***Eastman Chem. Co. v. Johnson***, 151 S.W.3d 503, 507 (Tenn. 2004); *see also*

Carson Creek Vacation Resorts, Inc. v. State Dep't of Revenue, 865 S.W. 1, 2 (Tenn. 1993). As this Court recently held in *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, ____ S.W.3d ____, 2008 WL 375257 (Tenn. Feb. 13, 2008) (Appendix 2):

> Where the language contained within the four corners of a statute is plain, clear, and unambiguous, the duty of the courts is simple and obvious, 'to say sic lex scripta, and obey it.' *Hawks*, 960 S.W.2d at 16 (*quoting Miller v. Childress*, 21 Tenn. 320, 321-22 (1841)).

Appendix 2, *6. Only if the plain language of a statute is ambiguous must the Court look beyond the statutory language to determine the legislature's intent. *See Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003); *Lavin v. Jordon*, 16 S.W.3d 362, 366 (Tenn. 2000).

The language of Section 48-2-122(b)(1) is not ambiguous, nor did the Court of Appeals find it to be so. Nevertheless, the Court looked to its decision in *Constantine v. Miller*, 33 S.W.3d 809 (Tenn. App. 2000), which concerned a different provision of the Tennessee Securities Act, Section 48-2-122(c)(1), to "offer guidance as to the proper interpretation" of Section 48-2-122(b)(1). Appendix 1, *5. No such guidance was necessary here. Section 48-2-122(b)(1) is plain and unambiguous. It expressly sets forth what a seller must prove in order to rescind the sale of a security, and it does so with admirable clarity. When the court below looked to *Constantine*, it abandoned its obligation to say "sic lex scripta" and apply the law as written.

Constantine concerned Section 48-2-122(c)(1), which requires that a plaintiff show that the defendant's violation of Section 48-2-121(a) affected the purchase price of the security in order to maintain an action for damages. Although Section 48-2-122(c)(1) may require a showing of reliance in some instances, it does not follow that Section 48-2-122(b)(1) does so as well. Sections 48-2-122(b)(1) and (c)(1) differ in both language and purpose. Section 48-2-122(b)(1) provides a claim for rescission to a seller as the result of a purchaser's negligence. Section 48-2-122(c)(1) provides a claim for damages to a plaintiff as the result of a

defendant's willful conduct. The Court of Appeals' apparent conflation of these provisions destroys the clarity and structure of both provisions.

4. This Court Should Restore Clarity to Section 48-2-122(b)(1).

The importance of the Tennessee Securities Act of 1980 to commerce in Tennessee cannot be understated. The General Assembly carefully tailored the remedial provisions of the Act to allow for rescission in the case of a negligent violation of the Act, and monetary damages in the case of a willful violation of the Act. The Act sets out in each case what an affected party must establish in order to recover. With the stroke of a pen, the Court of Appeals has upset this balance, and has imposed upon a claim under Section 48-2-122(b)(1) a new requirement of reliance which is absent from the text of that provision. This Court should accept review of this action and restore the clarity of Section 48-2-122(b)(1).

CONCLUSION

For all of the foregoing reasons, this Court should accept review of this case pursuant to Tenn. R. App. P. 11.[4]

[4] This Court should, in the exercise of its supervisory authority, also accept review of this action for a second reason. Not only did the Court of Appeals erroneously vacate the trial court's summary judgment ruling with respect to the rescission of the sale of Mrs. Green's stock in Champs-Elysees, the Court also erroneously vacated the trial court's issuance of summary judgment with respect to John Green's misappropriation of $46,600.00 from Champs-Elysees during his tenure as president. Appendix 1, *7. The Court found a genuine issue of material fact with respect to this claim, but did so only because it failed to analyze and apply this Honorable Court's holding in ***Owner-Operator Independent Driver's Ass'n, Inc. v. Concord EFS, Inc.***, 59 S.W.3d 63, 68-71 (Tenn. 2001). The Court of Appeals further erred in ruling that the trial court abused its discretion in denying John Green's motion to amend the complaint to add new claims, even though the motion was filed ***after*** Final Judgment had already been issued in this case. Appendix 1, *9.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document is being forwarded via first class U.S. mail, postage prepaid, to James D. R. Roberts, Jr., ROBERTS & LAYMAN, 701 Broadway, Customs House, Suite 401, Mailbox 1, Nashville, Tennessee 37203, on this the 5th day of May, 2008.

_____
Eugene N. Bulso, Jr.