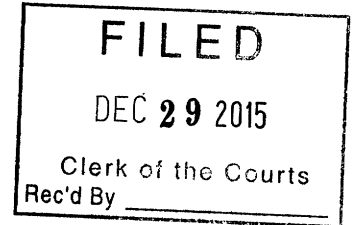


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENT TO THE TENNESSEE RULES
OF APPELLATE PROCEDURE

No. ADM2015-01631



ORDER

The Court adopts the attached amendment effective July 1, 2016, subject to approval by resolutions of the General Assembly. The rule amended is as follows:

RULE 26 FILING OF THE RECORD.

The text of the amendment is set out in the attached Appendix.

IT IS SO ORDERED.

FOR THE COURT:

A handwritten signature in cursive script, reading "Sharon G. Lee". The signature is written over a horizontal line.

SHARON G. LEE
CHIEF JUSTICE

APPENDIX

**AMENDMENT TO THE
RULES OF APPELLATE PROCEDURE**

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 26

FILING OF THE RECORD

[Amend Rule 26(b) and the original Advisory Commission Comment to subdivision (b) as shown below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

(a) Filing and Notice of Filing of the Record. — Upon receipt of the record following transmittal, the clerk of the appellate court shall file the record. The clerk shall immediately serve notice on all parties of the date on which the record was filed.

(b) Dismissal for Failure of Appellant Timely to File the Transcript or Statement. — If the appellant shall fail to file the transcript or statement within the time specified in Rule 24(b) or (c), or if the appellant shall fail to follow the procedure in Rule 24(d) when no transcript or statement is to be filed, the appellate court may dismiss the appeal on its own initiative or any appellee may file a motion in the appellate court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date and substance of the judgment or order from which the appeal was taken and the date on which the notice of appeal was filed. The appellant may respond within 14 days after the motion is filed. In lieu of granting the motion or at any time on its own ~~motion~~ initiative, the appellate court may order the filing of the transcript or statement. Nothing in this subdivision shall be construed to authorize dismissal of an appeal due to the errors or omissions of the clerk of the trial court.

Advisory Commission Comments. *Subdivision (a).* The docketing of an appeal under these rules takes place when the clerk of the appellate court receives a copy of the notice of

appeal from the trial court clerk. Under this subdivision the clerk of the appellate court files the record immediately upon its receipt and notifies all parties of the date on which the record was filed.

Subdivision (b). The failure of a party to file the transcript or statement within the time specified in Rule 24 may result in dismissal of the appeal on the appellate court's own initiative or upon motion. The motion should be in the form set forth in Rule 22 of these rules. Nothing in this rule permits the dismissal of an appeal due to the errors or omissions of the clerk of the trial court.

Advisory Commission Comments [1997]. *Subdivision (b).* The amendment to the first sentence fills a gap left in the original rule. If an appellant did not intend to file a transcript of evidence, but failed to follow the prescribed procedure in Rule 24(d), it was unclear where the appellee would file a motion to dismiss. The amended language makes it clear that the appellate court is the proper forum. The amendment to the third sentence keys response deadlines concerning a motion to dismiss to filing dates, not service dates.

Advisory Commission Comments [2016]. Rule 26(b) is amended to authorize the appellate court to dismiss an appeal on its own initiative if the appellant fails to file the transcript or statement of the evidence within the time specified in Rule 24(b) or (c), or if the appellant fails to follow the procedure in Rule 24(d) when no transcript or statement is to be filed. The appellate courts have case-management procedures under which the appellate court can be notified when the transcript or statement of the evidence (or a notice that neither will be filed) has not been timely filed in the trial court. For that reason, the appellate court should be authorized to dismiss an appeal in such circumstances, even if no motion to dismiss has been filed by an appellee. The Rule, however, continues to authorize any appellee to file such a motion.

Prior to dismissing an appeal on the appellate court's own initiative pursuant to Rule 26(b), the court usually will issue a show-cause order and permit the parties an opportunity to file written responses to the order.

Consistent with the amendment to subdivision (b) of the Rule, the original Advisory Commission Comment to subdivision (b) is amended to indicate that the appellate court can dismiss the appeal on its own initiative for failure to timely file the transcript or statement of the evidence.