No. M2024-00959-SC-R10-CO

IN THE SUPREME COURT OF TENNESSEE

STATE OF TENNESSEE,
Plaintiff/Appellee,

v.

RANDALL JOHNSON,
Defendant/Appellee,

and

THE NASHVILLE BANNER,
Intervenor/Appellant.

On Application from the Tennessee Court of Criminal Appeals
Case No. M2024-00959-CCA-WR-CO and from the Davidson County
Criminal Court Case No. 2021-C-1591

BRIEF OF AMICI CURIAE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, TENNESSEE ASSOCIATION OF BROADCASTERS, TENNESSEE COALITION FOR OPEN GOVERNMENT, AND TENNESSEE PRESS ASSOCIATION IN SUPPORT OF INTERVENOR/APPELLANT'S RULE 11 APPLICATION FOR REVIEW

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Pursuant to Tenn. R. App. P. 31, the Reporters Committee for Freedom of the Press, the Tennessee Association of Broadcasters, the Tennessee Coalition for Open Government, and the Tennessee Press Association (collectively, "Amici"), by and through their undersigned counsel, respectfully submit the following brief in support of the Nashville Banner's Tenn. R. App. P. 11 Application for Review. Amici agree with the Nashville Banner's Application, including its Questions Presented for Review, and write separately to address the need for review of the following issues:

1. Are sealing decisions of criminal trial courts subject to appellate review pursuant to Tenn. R. App. P. 10?

Suggested Answer: Yes.

2. Does this Court's decision in *State v. Drake*, 701 S.W.2d 604 (Tenn. 1985) establish the applicable standard for deciding when court records subject to the First Amendment right of access may be sealed?

Suggested Answer: Yes.

FACTS RELEVANT TO THE QUESTIONS PRESENTED

The Nashville Banner (the "Banner") moved to intervene and unseal three documents in a criminal case in Davidson County Criminal Court related to recusal of a trial judge. Order at 1–2.[1] At the time the Banner filed its motion, neither party had moved to seal the records nor

[1] The Court of Criminal Appeals' decision will be cited as the "Order" and the trial court's decision will be cited as the "Trial Ct. Order."

had the court entered a sealing order; nevertheless, the records were sealed. *Id*. at 2. The Banner requested that the court unseal the three court records, citing the First Amendment and common law rights of access. Trial Ct. Order at 2. While the trial court granted its request to intervene, it denied the Banner's request to unseal the three recusal documents. *Id*. at 8–9. The trial court provided limited reasons for denying the request to unseal and instead broadly asserted that access to the requested documents "would likely result in the publication of claims that (a) are currently insufficiently supported, (b) would annoy, embarrass, oppress, or create undue burdens for involved persons, (c) deny involved persons their rights to substantive, procedural, and administrative due process, and (d) delay court proceedings." *Id*. at 9.

The Banner sought review of the trial court's order in the Court of Criminal Appeals under Tenn. R. App. P. 10 and Tenn. Code Ann. § 27-8-101. Order at 1. The Court of Criminal Appeals found that appeal was not permitted pursuant to Tenn. R. App. P. 10, *id*. at 3, and, applying the writ of certiorari standards, the Court of Criminal Appeals declined review. *Id*. at 5.

INTRODUCTION

Amici are organizations dedicated to governmental transparency for the public's benefit. Access to judicial records is critical to the public's understanding of the judicial system and oversight of the actions of participants, including judges, within that system. Access is even more important in criminal cases. Given the importance of public access to judicial records, this Court and others have recognized a First

Amendment right of access to those records, which applies a stringent test to decide when judicial records may be sealed and inaccessible to the public.

Here, a motion to recuse and two supporting affidavits were improperly sealed without a motion or order and, when the sealing was challenged by the Banner, the trial court did not apply the First Amendment right of access test, but instead incorrectly applied a test that is used for sealing raw, civil discovery materials. The same error was made on appeal and was compounded by the fact that the Court of Criminal Appeals held that the Banner could not appeal the trial court decision pursuant to Tenn. R. App. P. 10. Review here is necessary on both points to secure uniformity of judicial decisions and to address these important questions of law and public interest. As such, Amici respectfully request that the Court grant the Banner's application for review.

REASONS SUPPORTING REVIEW

I. Review is necessary to secure uniformity of judicial decisions regarding appealability of closure orders in criminal cases and to address that important question of law and public interest.

A. The Court of Criminal Appeals' decision denying review is contrary to precedent.

The Court of Criminal Appeals held that the Nashville Banner could not appeal the trial court's decision denying unsealing pursuant to Tenn. R. App. P. 10 because "subsection (e) of Rule 10 specifically limits the opportunity to seek appellate review in criminal cases to the State

and the Defendant." Order at 3. That decision is in direct conflict with this Court's decision in *State v. Drake*, 701 S.W.2d 604 (Tenn. 1985) and the Court of Criminal Appeals' decision in *State v. Montgomery*, 929 S.W.2d 409 (Tenn. Crim. App. 1996).[2] Review is thus necessary to secure uniformity of decisions on this issue.

In *Drake*, this Court directly addressed how a media intervenor seeking access to judicial proceedings and records in a criminal proceeding can appeal an adverse ruling. 701 S.W.2d at 607–09. There, the trial judge ordered closure of the courtroom for "all pre-trial proceedings" and sealed "all motions, orders and transcripts." *Id.* at 606. A coalition of media entities then sought to intervene in the case to challenge the closure order. *Id.* The motion to intervene was granted, but the trial court largely affirmed its prior order. *Id.* In its decision, the Court of Criminal Appeals "rejected intervention at the trial level" as the proper means for challenging the closure order and instead held that "[t]he common law writ of certiorari and/or mandamus" was the proper way to initiate such a challenge. *Id.* at 606–07. This Court reversed and held, among other things, that "[a]ppellate review shall be available to intervening parties as provided in Rule 10, T.R.A.P. from the trial court to the Court of Criminal Appeals, and, if necessary, to this Court." *Id.* at 608.

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[2] The same provision relied upon by the Court of Criminal Appeals here to support its decision that a writ of certiorari is the lone procedural mechanism for appellate review, Tenn. R. App. P. 10(e), was also in effect when *Drake* was decided. Tenn. R. App. P. 10(e) (1985) (available at the Tennessee State Library and from counsel for Amici).

Similarly, the Court of Criminal Appeals in *Montgomery* granted review pursuant to Tenn. R. App. P. 10 of a prior restraint order, which had prohibited the media from publishing the name of a witness who testified, and was identified by name, in open court. 929 S.W.2d at 410 & n.1. Memphis Publishing Company moved to intervene to challenge the prior restraint, but the trial court denied its request. *Id.* at 410–11. Relying on *Drake*, the appellate court reversed and explained that the proper way to challenge a prior restraint is by a motion to intervene and that Tenn. R. App. P. 10 is the vehicle for seeking appellate review.[3] *Id.* at 411 & nn.2–3 (citing *Drake*, 701 S.W.2d at 608).

The Court of Criminal Appeals' decision here is inconsistent with its own decision in *Montgomery* and this Court's decision in *Drake*. As such, review is necessary to secure uniformity of decisions regarding whether an intervenor in a criminal case may appeal an adverse ruling pursuant to Tenn. R. App. P. 10.

B. Review will resolve an important issue of law and public interest regarding the appealability of closure and other restrictive orders in criminal courts.

This Court in *Drake* succinctly explained that review of an adverse decision against an intervening party, including in criminal cases, is available under Tenn. R. App. P. 10 because, without it, "if the trial judge is in error in issuing the closure order, the intervening party will lose a

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[3] The Court of Criminal Appeals in *Montgomery* also cited to Tenn. Sup. Ct. R. 30(E), which provides for appellate review pursuant to Tenn. R. App. P. 10 for challenges to a trial court's decision denying electronic media coverage of a proceeding. *Id.* at 411.

right or interest that may never be recaptured." 701 S.W.2d at 608–09. The ability to appeal pursuant to Tenn. R. App. P. 10 is essential to protect a variety of rights attendant to open court proceedings, as illustrated by the decisions in *Drake* and *Montgomery*. In both *Drake* and *Montgomery*, like here, the First Amendment rights of the media were at stake in criminal proceedings. *Drake*, 701 S.W.2d at 607 (discussing First Amendment right of access to criminal proceedings); *Montgomery*, 929 S.W.2d at 410 (discussing violation of First Amendment by issuance of a prior restraint on speech). As the Court of Criminal Appeals explained in *Montgomery*, "[t]he First Amendment rights of the press are always of great public interest and are of vital importance to the administration of justice in this state. As a result, the appellate courts of this state have zealously guarded the First Amendment rights of the print and electronic media." 929 S.W.2d at 414; *see also Rudd Equip. Co. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 592 (6th Cir. 2016) (holding that a sealing order is immediately appealable under collateral order doctrine because, among other things, it presents "an important issue completely separate from the merits of the action, and which would be effectively unreviewable on appeal from a final judgment").

If left to stand, the Court of Criminal Appeals' decision will leave those seeking access to sealed court records, those seeking to challenge closure of a courtroom, or those seeking to challenge a prior restraint with a writ of certiorari as the only means for bringing such challenges. Limiting appeals to writs of certiorari rather than appeal pursuant to Tenn. R. App. P. 10 erects an additional barrier to the exercise of First

Amendment rights and, accordingly, this Court's resolution of this important question of both law and public interest is needed.

II. Review is also needed to secure uniformity of decisions and to resolve an important question of law and public interest regarding the proper standard for sealing judicial records subject to the First Amendment right of access.

A. The decisions in this case are contrary to those from this Court and the Court of Appeals on the standard for sealing judicial records.

"Transparency … is essential to maintaining public respect for the criminal justice system, ensuring its integrity, and protecting the rights of the accused." *State v. Schiefelbein*, 230 S.W.3d 88, 114 (Tenn. Crim. App. 2007) (quoting *Smith v. Doe*, 538 U.S. 84, 99 (2003)). Here, transparency surrounding a trial judge's recusal based on a motion for disqualification was denied, first by sealing of the motion and two supporting affidavits without a sealing order or motion, and then by the trial court and appellate court's decisions upholding that seal. Order at 1, 4–5; Trial Ct. Order at 1–2, 8–9. The trial and appellate courts' decisions are at odds with decisions from this Court and other appellate decisions in Tennessee. As such, review by this Court is necessary to secure uniformity of decisions in Tennessee on the proper standards for deciding whether a seal of judicial records is proper.

The standard applied by both the trial and appellate court in this case was from this Court's decision in *Ballard v. Herzke*, 924 S.W.2d 652 (Tenn. 1996). Order at 4–5; Trial Ct. Order at 9. But, in applying that standard, those courts not only ignored the critical factual distinctions

that differentiate this case from *Ballard*, but also disregarded that the public, including the press, have a right of access to many records filed in criminal proceedings under the First Amendment, which requires the satisfaction of a more stringent test to justify sealing of court records.

Ballard addressed the standard for modifying a protective order sealing documents obtained through civil discovery that the trial court required to be filed with the clerk. 924 S.W.2d 654–55; *see also id.* at 658 ("A proper analysis of [the arguments] requires that we review the standards governing the issuance of a protective order, and those governing modification of an already-existing protective order."). In analyzing the question, this Court applied the "good cause" standard under Tenn. R. Civ. P. 26.03, while also considering the parties' reasonable reliance on the already granted protective order. *Id.* at 658–60. The Court in *Ballard* also noted that there were both common law and constitutional rights of access to judicial records and that the First Amendment "presumes that there is a right of access to proceedings and documents which have 'historically been open to the public' and which disclosure would serve a significant role in the functioning of the process." *Id.* at 661 (quoting *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994)); *see also Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 (Tenn. Crim. App. 1998) ("[T]he Tennessee Supreme Court has recognized a qualified right of the public, founded in common law and the First Amendment to the United States Constitution, to attend judicial proceedings and to examine the documents generated in those proceedings." (citing *Ballard*, 924 S.W.2d at 661)).

The "good cause" standard in *Ballard* applies only to raw discovery in civil matters, including when it is required to be filed, but not, for example, when it is part of a dispositive motion. That distinction is supported by subsequent decisions from the Court of Appeals. The Court of Appeals in *Kocher v. Bearden* recognized the limited reach of *Ballard* by noting that "our supreme court discussed the standards governing the issuance of a protective order in the context of discovery." 546 S.W.3d 78, 85 n.9 (Tenn. Ct. App. 2017) ("*Kocher I*"); *see also Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) ("[T]here is a stark difference between so-called 'protective orders' entered pursuant to the discovery provisions of Federal Rule of Civil Procedure 26, on the one hand, and orders to seal court records, on the other."); *In re Estate of Thompson*, 636 S.W.3d 1, 18 (Tenn. Ct. App. 2021) ("*Ballard* is quite clearly limited to documents produced in discovery, notwithstanding the fact that in that particular case, the documents were also part of the court record and, therefore, public records." (citing *Ballard*, 924 S.W.2d at 662)); *id*. at 17–18 (rejecting argument that *Ballard* controlled all sealing issues); *Bottorff v. Bottorff*, No. M2019-00676-COA-R3-CV, 2020 WL 2764414, at *3 (Tenn. Ct. App. May 27, 2020) ("Tennessee courts have developed two different methods of analysis to be applied when determining whether a trial court can properly order that these two categories of documents, those produced during discovery and those produced during trial, remain sealed." (citing *Ballard*, 924 S.W.2d at 659; *Kocher I*, 546 S.W.3d at 86)); *Kocher v. Bearden*, No. W2017-02519-COA-R3-CV, 2018 WL 6423030, at *5 n.6, 13 (Tenn. Ct. App. Dec. 5, 2018)

("*Kocher II*") (explaining that *Ballard* "discussed the standards governing the issuance of a protective order in the context of discovery pursuant to Tennessee Rule of Civil Procedure 26.03" and declining to apply *Ballard* test in favor of the *Drake* test).

The judicial records sought to be unsealed here are not raw discovery materials exchanged by parties in civil litigation and subject to a blanket protective order that a court required to be filed under seal. Accordingly, *Ballard* is inapplicable; it does not provide the correct sealing standard. Instead, the applicable standards are the common law right of access and, more specifically here, the First Amendment right of access.[4] *In re Nat'l Broad. Co.*, 828 F.2d 340, 344–45 (6th Cir. 1987) (holding that the First Amendment right of access attached to motions and affidavits seeking disqualification of trial judge).

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[4] Courts in Tennessee have noted that both Article I, Section 19 and Article I, Section 17 of the Tennessee Constitution also provide a qualified right of access to judicial records. *In re Estate of Thompson*, 636 S.W.3d at 11 (noting that Article I, Section 17 of the Tennessee Constitution requires that "all courts shall be open" and that "[t]he Constitutional mandate for open courts extends to a court's judicial records" (citations omitted)); *Kocher I*, 546 S.W.3d at 85 (referencing Article I, Section 17 of the Tennessee Constitution in discussion of rule that judicial records are presumptively open to the public); *Baugh v. United Parcel Serv., Inc.*, No. M2012-00197-COA-R3-CV, 2012 WL 6697384, at *6 (Tenn. Ct. App. Dec. 21, 2012) (same); *Knoxville News-Sentinel*, 982 S.W.2d at 362 n.3 ("Article I, Sec. 19 of the Constitution of Tennessee presumably extends a similar qualified right [of access to judicial records] to the public."); *In re NHC*, 293 S.W.3d 547, 560 (Tenn. Ct. App. 2008) (referencing Article I, Section 17 as explicitly providing that "the courts shall be open" as part of discussion on access to judicial records).

This Court discussed the First Amendment right of access in *Drake*, 701 S.W.2d at 607–08. In that case, the Court reviewed a trial court's order closing all pre-trial proceedings and sealing all "motions, orders and transcripts." *Id.* at 606. The *Drake* Court held that "the principles that must be applied in Tennessee when a closure or other restrictive order is sought" are that there is a "presumption of openness" and that "[t]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Id.* at 607–08 (quoting *Waller v. Georgia*, 467 U.S. 39, 45, 48 (1984)).

While the Court of Criminal Appeals below erroneously applied *Ballard*, other appellate courts in Tennessee have properly applied *Drake* when deciding a sealing issue involving something other than raw, civil discovery materials. *In re Estate of Thompson*, 636 S.W.3d at 11 (applying *Drake* standard to decide sealing issue regarding filed, non-discovery documents, including documents related to request for judicial approval of settlement); *Bottorff*, 2020 WL 2764414, at *9–10 (applying *Drake* test to transcript of trial testimony and trial exhibits); *Kocher II*, 2018 WL 6423030, at *13 (applying *Drake* test to decide whether sealing of joint petition to approve settlement of a case should stand (citations omitted)); *Kocher I*, 546 S.W.3d at 86 (discussing that the standard from *Drake* applies to sealing orders outside the discovery context (citations omitted)); *Baugh*, 2012 WL 6697384, at *6–7 (applying *Drake* test to deny

sealing of a filed settlement agreement); *Knoxville News-Sentinel*, 982 S.W.2d at 363 (explaining that "any restriction on public access [to court records] must be narrowly tailored to accommodate the competing interest without unduly impeding the flow of information" (citing *Drake*, 701 S.W.2d at 607)).

This Court should clarify the proper standard for sealing court records that are not raw, civil discovery materials to bring uniformity to Tennessee's law on the question. As such, Amici urge the Court to grant the Nashville Banner's application for review.

B. Clarifying the proper standard for sealing court records is an important question of law and public interest.

"Throughout our history, the open courtroom has been a fundamental feature of the American judicial system." *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177 (6th Cir. 1983). "To work effectively, it is important that society's criminal process 'satisfy the appearance of justice' and the appearance of justice can best be provided by allowing people to observe it." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571–72 (1980) (internal citation omitted). But the constitutional right to attend court proceedings is incomplete without the ability to review the records that are the foundation for and result of those proceedings. *Brown & Williamson*, 710 F.2d at 1177 (explaining that the principles of open court proceedings "apply as well to the determination of whether to permit access to information contained in court documents because court records often provide important,

sometimes the only, bases or explanations for a court's decision"); *see also In re NHC*, 293 S.W.3d at 560 ("The openness of judicial proceedings extends to judicial records." (citation omitted)).

The importance of access to courts, including court records, is well chronicled and, here, review is essential to resolve the important question of law and public interest. This Court has explained that "[t]he public's right to access provides public scrutiny over the court system which serves to (1) promote community respect for the rule of law, (2) provide a check on the activities of judges and litigants, and (3) foster more accurate fact finding." *Ballard*, 924 S.W.2d at 661 (citation omitted). Moreover, "secrecy insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption." *Brown & Williamson*, 710 F.2d at 1179. "Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (citing *Richmond Newspapers*, 448 U.S. at 569–71). "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Id*. at 509 (quoting *Richmond Newspapers*, 448 U.S. at 572).

These statements are more than platitudes. Rather, they recognize and describe the fundamental importance of court access, including access to court records, in our system of government. The impact on the law and public of a decision in this case would be significant as it goes to the heart of the public's ability to monitor the activities of the judicial

branch of our government. Moreover, sealed court records are a potential issue in every case that is litigated in Tennessee's courts. Access to records that are wrongly sealed would shine additional light on judicial proceedings throughout our legal system, in both criminal and civil cases, which is especially critical in the former where the state is a party and an individual's liberty is potentially at stake. And in the rare cases where sealing is appropriate, lawyers, judges, the press, and the public will know what the proper standard is for sealing court records in criminal cases if this Court accepts review.

Even if this Court were to grant review to address only the narrower issue of public access to materials filed in connection with motions seeking the recusal of a judge, that question would be an important one of law and public interest. Indeed, access to such filings is critical to informing the electorate because Tennessee trial judges are elected and appellate judges are the subject of retention elections and, even if judges were not elected, transparency regarding judicial recusals goes to the integrity of the judicial process. Without access to motions to recuse and supporting materials, the public is less informed in making their voting decisions. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982) ("[P]ublic access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government."); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839 (1978) ("The operations of the courts and the judicial conduct of judges are matters of utmost public concern."); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 296–97 (1964) (Black, J., concurring) ("[F]reedom to discuss public affairs and public

officials is unquestionably … the kind of speech the First Amendment was primarily designed to keep within the area of free discussion.”).

Review here would resolve an important question of law and of public interest by clarifying the proper legal standard for determining when a court record may be sealed in a criminal case. As such, review by this Court is necessary.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court grant the Banner’s application for review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 20, 2024, a true and correct copy of the foregoing was served through the Court's e-filing system on:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this filing complies with the word-count limit set forth in Tenn. R. App. P. 30(e). Based on the word-count function of Microsoft Word, the total word count for all printed text in the body of the brief exclusive of the material omitted under Tenn. R. App. P. 30(e) is 3,950 words. The Tenn. R. App. P. 27(e) addendum is also not included in this word count. This brief complies with the requirements of Tenn. Sup. Ct. R. 46, § 3.02(a). The text of the brief is 14-point Century Schoolbook font with 1.5 line spacing and 1-inch margins.

/s/ Paul R. McAdoo
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RULE 27(e) ADDENDUM

Pursuant to Tenn. R. App. P. 27(e), Amici submit the following constitutional provisions and appellate rule that are relevant to the determination of the issues presented.

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Tenn. Const. art. I, § 17

That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.

Tenn. Const. art. I, § 19

That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases.

Tenn. R. App. P. 10

(a) Original Application for Extraordinary Appeal; Grounds. An extraordinary appeal may be sought on application and in the discretion of the appellate court alone of interlocutory orders of a lower court from which an appeal lies to the Supreme Court, Court of Appeals or Court of Criminal Appeals: (1) if the lower court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review, or (2) if necessary for complete determination of the action on appeal as otherwise provided in these rules. The appellate court may issue whatever order is necessary to implement review under this rule.

(b) How Sought; Clerk's Fees. - An extraordinary appeal is sought by filing an application for an extraordinary appeal with the clerk of the appellate court. A sufficient number of copies shall be filed to provide the clerk and each judge of the appellate court with one copy. Unless necessity requires otherwise, the application shall be served on all other parties in the manner provided in Rule 20 for the service of papers. The appeal shall be docketed in accordance with Rule 5(c) upon the filing of the application with the clerk of the appellate court. An appeal from the denial of an application for extraordinary appeal by an intermediate appellate court is sought by filing an application in the Supreme Court as provided for in this rule within 30 days of the filing date of the intermediate appellate court's order. Applicable fees, taxes, or documentation required by Rule 6 shall be submitted with the application.

(c) Content of Application. The application shall contain: (1) a statement of the questions presented for review; (2) a statement of the facts necessary to an understanding of why an extraordinary appeal lies, with appropriate references to the documents contained in the appendix to the application; (3) a statement of the reasons supporting an extraordinary appeal, and (4) the relief sought. The application shall be accompanied by an appendix containing copies of any order or opinion relevant to the questions presented in the application and any other parts of the record necessary for determination of the application. The application may also be supported by affidavits or other relevant

documents, which also shall be contained in the appendix. The application to the Supreme Court shall include the application filed in the intermediate appellate court and a copy of the intermediate appellate court's order.

(d) Subsequent Procedure. If the appellate court is of the opinion that an extraordinary appeal should not be granted, it shall deny the application. Otherwise, the appellate court shall order that an answer to the application be filed by the other parties within the time fixed by the order. The order shall be served on all other parties and if the application has not previously been served shall have attached thereto a copy of the application. An answer shall be accompanied by an appendix containing any additional parts of the record the answering party desires to have considered by the appellate court; any statement of facts in the answer shall contain appropriate references to the documents contained in the appendix to the application or the appendix to the answer. After the answer is filed, the appellate court shall either grant or deny the application. If the application is granted, the trial court clerk must file the record on appeal within 30 days from the date of entry of the order granting permission to appeal or within such other period as the appellate court may direct. The appellate court shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument, if oral argument is granted. Except as otherwise expressly provided in this rule or ordered by the court, the content, filing, and form of briefs under this rule are governed by Rules 27-30.

(e) Appeal in Criminal Actions. Permission to appeal under this rule may be sought by the state and defendant in criminal actions.

(f) Color of Covers. If available, the color of the cover of the application shall be blue. If the appellate court orders that an answer be filed, the cover of the answer shall be red, except that the cover of an answer filed by an amicus curiae shall be green.