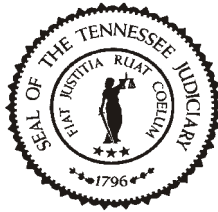


**STATE OF TENNESSEE**  
**THIRD JUDICIAL DISTRICT**  
**CHANCERY COURT**



**LOCAL RULES OF PRACTICE**

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**Adopted as Mandated by Rule 18  
of the Supreme Court  
of Tennessee**

**Effective January 1, 2007**

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**RULE 1: RULES OF COURT: APPLICABILITY, SUSPENSION AND DEFINITIONS**

**Section 1.01 Former Rules Abrogated**

Effective January 1, 2007, all former rules of local practice, except as readopted herein, are abrogated.

**Section 1.02 Applicability**

Each rule is applicable to the Chancery Court of the Third Judicial District, State of Tennessee. Each rule is applicable in all types of cases unless otherwise indicated by a particular rule. Each rule is applicable both to the *pro se* party (a/k/a “self- represented litigant”) and to members of the bar. The Rules of the Supreme Court, the Rules of Appellate Procedure, the Rules of Civil Procedure, the Rules of Evidence, as well as applicable statutes, shall control in the event of any conflict between same and these Local Rules.

**Section 1.03 Suspension of Rules**

Whenever the Court determines that justice requires it, it may suspend any of these rules.

## **Section 1.04 Definitions**

The following definitions apply to terms used in these rules:

Clerk: The Clerk and Master of the Chancery Courts, or their designee(s). And, where indicated, the County Clerk of Greene County.

*Pro Se* Party: Self-Represented Litigant

{The term *pro se* party (a/k/a “self-represented litigant”) shall be used interchangeably with “attorney” and “counsel”, when an individual is representing himself/herself.}

Rules of the Supreme Court: Rules of the Supreme Court of the State of Tennessee  
(a/k/a Tenn. Sup. Ct. R.)

Rules of Appellate Procedure: Tennessee Rules of Appellate Procedure (a/k/a T.R.A.P.)

Rules of Procedure: Tennessee Rules of Civil Procedure (a/k/a T.R.C.P)

Rules of Evidence: Tennessee Rules of Evidence

Tennessee Code Annotated: T.C.A.

## **Section 1.05 Citation**

These rules may be cited as "**Local Rules of Practice**, Section \_\_\_\_\_"; and, if no particular section is being cited, cite as "**Local Rule of Practice 2**".

## **RULE 2: COURT SESSIONS**

Court sessions shall commence at 9:00 a.m. or at such time as the Court directs. The **Judge, attorneys, parties and witnesses shall be prompt at all sessions.** Uncontested matters may be presented before the opening of Court, at approximately 8:30 a.m. or as soon thereafter as possible. See Local Rule 8.03, *infra*.

## **RULE 3: APPEARANCE AND CONDUCT OF COUNSEL**

### **Section 3.01 Counsel of Record; Entry of Appearance**

(A) Appearance of counsel shall be made in one of the following ways:

- (1) the filing of pleadings;
- (2) the filing of formal notice of appearance; or
- (3) the appearance in open court, before pleadings are filed.

(B) In Domestic Relations cases, upon the finality of any judgment or order that terminates the proceeding then subsisting between the parties, no attorney in that proceeding shall be considered as counsel of record in any subsequent proceeding for purposes of service of process upon or notice to the adverse party unless that attorney in fact at that time represents his/her former client. If service of process is made upon an attorney, or notice given to such attorney, and that attorney advises the Court that he/she does not at that time represent the former client, the notice to the attorney shall not be effective to bring the former client before the court.

### **Section 3.02 Withdrawal of Counsel**

No attorney shall be allowed to withdraw except for good cause and by leave of Court upon motion after notice to all other counsel and/or *pro se* parties and to the client of the attorney wishing to withdraw. The order allowing withdrawal shall bear a certificate of service reflecting that a copy of the order allowing withdrawal has been furnished both to the opposing attorney (or to the opposing party, if unrepresented by counsel) and upon the client of the attorney wishing to withdraw. Further, such order shall provide that the affected party has thirty (30) days to secure other counsel if the party so chooses, which counsel shall enter an appearance within that time or, failing therein, that it will be presumed that the client is electing to proceed *pro se*. The certificate of service on said order shall contain the full mailing address of the client-party or recite that such address is not known to the attorney.

Withdrawal of counsel shall be made so as not to delay trial. All motions to withdraw shall state the trial date or that no trial date has been set and shall comply with the applicable provisions of the Code of Professional Responsibility.

Counsel who are surety for costs remain surety despite withdrawal until a successor surety is obtained or until the plaintiff posts a five hundred dollars (\$500) cash bond or corporate surety bond, unless the plaintiff is permitted to proceed under a pauper's oath. See also Local Rule 14.07, *infra*.

### **Section 3.03 No appearance Entered; Copies of Pleadings**

If a party has no counsel of record, copies of pleadings shall be furnished to the party by opposing counsel; and the absence of counsel shall be called to the attention of the Court by opposing counsel before any action is taken which substantially affects the case.

### **Section 3.04 Conduct**

(A) Familiarity With Participants. During trial, counsel shall not exhibit familiarity with witnesses, jurors, opposing counsel, or the Chancellor; and the use of first names, except with child witnesses, shall be avoided. No juror shall be addressed individually by name during opening statements or closing arguments. No attorney, party, witness, or other interested person shall engage in any conversation with any member of the jury panel during the trial of a case without express consent of the Court.

(B) Approaching the Bench. Bench conferences should be requested only when necessary in aid of a fair trial. Attorneys shall not approach the bench without Court approval. Counsel shall not lean upon the bench nor appear to engage the Court in conversation in a confidential manner.

(C) Refrain from Interruptions. Counsel should refrain from interrupting the Court or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect the client, and should respectfully await the completion of the Court's statement or opinion before undertaking to point out objectionable matters. When objection is made to a question asked, counsel should refrain from asking the witness another question until the Court

has had the opportunity to rule upon the objection. Objecting counsel shall state the legal grounds without argument or discussion, except by leave of Court.

(D) Examining Witnesses and Addressing the Court or Jury. All attorneys shall stand while addressing witnesses, the jury or the Court; however, exception may be made in the Court's discretion. When attorneys are examining witnesses or addressing the jury, they shall not approach the witness or jury without the Court's permission.

(E) Refrain From Exhibiting Emotion. Attorneys shall admonish their clients to refrain from exhibiting by facial expression, gesture or sound their feelings or opinions regarding the testimony of any witness or rulings of the Court. Persons sitting in the gallery of the courtroom shall also refrain from exhibiting by facial expression, gesture or sound their feelings or opinions regarding the testimony of any witness or rulings of the Court.

(F) Space within the Bar Reserved. The space within the bar of the courtroom is reserved for parties engaged in the case on trial, attorneys and court officials. Spectators and prospective jurors and witnesses shall be seated outside the bar in the general seating area. If children are present in the courtroom or situated outside the courtroom, they shall refrain from making excessive noise.

(G) Proper Attire. All male attorneys are required to wear jackets and ties. Female attorneys are required to wear similar appropriate clothing during the presentation of a case. Counsel, litigants, witnesses, court reporters, and other officers of the Court shall not dress in a manner which distracts from the proper decorum in the Court, but must wear appropriate clothing. At least, the following are not permitted in the courtroom: shorts, swim suits, leotards, low cut or open shirts or blouses, bare feet, or other inappropriate attire, including hats/caps worn by males.

(H) Forbidden Items. There shall be no use of tobacco products in the courtroom or at the taking of a deposition. There shall be no food, beverages, or gum in the courtroom; however, water is permitted at counsel table. Cell phones and other electronic devices shall be silenced while in the courtroom. The use of cell phones is prohibited while in the courtroom.

(I) All attorneys who have been licensed to practice law in the State of Tennessee and who possess a current registration card issued by the Board of Professional Responsibility shall be automatically eligible to practice law in the courts of this district. Attorneys appearing in a case shall place their B.P.R. number below their signatures on any pleading or motion filed with the courts. Upon making an initial appearance, attorneys shall be formally introduced to the Court and their qualifications vouched for by a member of the bar of this Court.

(J) Attorneys residing out of the State of Tennessee and wishing to appear before a court of this district shall comply with Supreme Court Rules 19 and 20 before making any appearance and, upon compliance, may appear as the Court directs.

### **Section 3.05 Setting Attorney Fees**

Whenever it is necessary to fix fees of attorneys, the attorney shall file a Statement of Services Rendered in compliance with *Tennessee Supreme Court Rule 8, Rule of Professional Conduct 1.5* and shall include the type of services, time spent, suggested fee, contractual arrangement and other information required by the Court. A copy of the petition/motion for attorney's fees shall be served on all interested parties along with a notice of time and date that the attorney will appear before the Chancellor seeking approval of the attorney's fees. The petition/motion must also contain a certificate that a copy has been mailed or delivered to all persons entitled to notice. If the fees requested are in excess of five thousand dollars (\$5,000), the petition/motion must be accompanied by the affidavits of two (2) disinterested attorneys stating the amounts they consider to be reasonable fees. See Local Rule 22.04, *infra*.

### **Section 3.06 Contacting Chancellor**

No counsel, party or a witness to a pending or impending action shall contact the Chancellor, except as permitted by law. The litigants and witnesses should be instructed that under no circumstances shall they contact the Chancellor or the Chancellor's secretary, paralegal or law clerk. However, approved orders, judgments, etc., may be forwarded to the Chancellor for purposes of signature prior to entry. In the event *ex parte* correspondence is delivered to the Court, a notice of filing will be entered by the Court. "Any letters received by the Chancellor, whether received in chambers or in open court, should be filed in the cause and made a public record, permitting counsel for the respective parties to read the letters and the court to consider the letters when a party presents an issue predicated upon the letters", pursuant to State v. Birge, 792 S.W.2d 723 (Tenn. Crim. App. 1990). See Tenn. Sup. Ct. R. 10, Cannon 3, note 1.

### **RULE 4: COURT FILES**

No person, except the judge, clerk or designee, shall be allowed access to the filing cabinets, vaults, or other repositories where court records are kept. All papers and records of the Court shall be in the custody of the Clerk. **FILES MAY NOT BE WITHDRAWN BY ANY PERSON, OTHER THAN BY THE CHANCELLOR, AT ANY TIME.** In the event the Court file is needed out of county for a hearing, the Clerk shall make arrangements to have the Court file delivered to the Court, with five (5) days' notice being provided to the Clerk by the requesting party and/or attorney. Upon request, copies of the content of files shall be furnished by the Clerk at reasonable cost.

### **RULE 5: FILING AND SERVICE OF PAPERS**

#### **Section 5.01 Filing with the Clerk**

All papers, including pleadings, motions, and proposed judgments and orders, shall be filed with the Clerk; and all such documents that require an original signature shall be signed in a conspicuous color of ink other than black. Copies of original briefs shall be submitted directly to the Chancellor, with the original to be filed in the court file along with a copy of the transmittal letter indicating that a copy of same has been provided to the Chancellor. The approved originals of orders, judgments, etc., may be forwarded directly to the Chancellor for signature prior to entry, provided that a pre-addressed, postage prepaid envelope is enclosed therewith for the forwarding of the same to the proper Clerk's office. See T.R.C.P. 5A for facsimile filing of papers.

#### **Section 5.02 Certificate of Service**

All papers must include a certificate of service which shall contain the date of service and the name of the person or persons served, as well as the address of such person or persons. No certificate of service shall be accepted which merely certifies that "copies have been served upon all parties" or fails to clearly designate by name and address the person(s) so served.

#### **RULE 6: TRIAL CALENDAR**

Trial calendars shall be prepared by the Clerk for each day the Court is in session. It is incumbent upon attorneys practicing in this district to inform themselves of the court's schedule.

#### **RULE 7: MOTIONS**

##### **Section 7.01 Time for Filing Pre-Trial Motions**

Pre-trial motions, which may be dispositive of one or more issues in a case, shall be filed at least thirty (30) days prior to the date of a hearing on the motion. This thirty (30)-day requirement may be waived by the agreement of the parties, with the concurrence of the court. All motions potentially dispositive of any issue in a case shall be scheduled for hearing through the Clerk's office by the attorney filing the motion as soon as practicable. Failure to obtain a motion hearing in a timely manner may be construed by the Court as an abandonment of the motion and the Court may refuse to consider same. See also Local Rule 7.05, *infra*.

##### **Section 7.02 Briefs on Motions and Responses**

Every motion, or response thereto, which may require the resolution of an issue of law and every motion or response thereto in which legal authority is relied upon shall be accompanied by a memorandum of law in support thereof.

##### **Section 7.03 Oral Argument of Motions**

Except with regard to motions requiring an evidentiary hearing, pursuant to law, the Court may rule upon motions without oral argument or hearing. The Court, however, may grant oral argument or hearing upon good cause shown by any party, or upon the Court's own motion. Counsel should always assume that the Court may rule upon any motion, as well as any response thereto, without oral argument or hearing; therefore, all motions and responses thereto shall be thorough, detailed and complete. "There is no requirement in the rules of civil procedure that oral arguments be permitted on motions. The trial court has the discretion whether it will hear arguments or decide the issues on the pleadings." *Hutter v. H. Allen Bray* (2002 Tenn. App. LEXIS 392).

#### **Section 7.04 Time for Filing Responses to Motions**

Responses to motions, including counter-affidavits, depositions, briefs or any other matters being presented in opposition to motions must be filed and served on the movant no later than fifteen (15) days after the filing of the motion. Unless the party responding to a motion secures an extension of time in which to file a response, if no response is filed within the aforesaid fifteen (15) day period, the court shall presume that no response is to be filed and the motion shall be considered unopposed.

#### **Section 7.05 Docketing Motions for Oral Hearing**

Oral argument on motions shall be set in one of the following ways:

- (A) By agreement of counsel, *after consultation with the Clerk* as to a suitable date and time. Any motion may be heard in any county of the Third Judicial District, after consultation with the Clerk & Master of the County in which the motion is to be heard; however, notice to appear out-of-county shall be strictly prohibited in the absence of an agreement of all parties, as well as witnesses, to travel outside the county in which the case is filed;
- (B) By the Court at periodic docket soundings;
- (C) By the Court with notice to counsel;
- (D) By the moving party, after procuring from the Clerk a suitable date and time;
- (E) By the Clerk, in the Clerk's discretion, with notice by the moving party.

#### **Section 7.06 Motions for *Pendente Lite* Relief**

Motion Hearings for *Pendente Lite* Relief, other than in cases involving spousal support, shall be scheduled for hearing by contacting the Clerk's office. {Motions for alimony *pendente lite* and responses thereto are governed specially by Rule 15.04.}

#### **Section 7.07 Summary Judgment Motions**



Motions for summary judgment shall be filed, pursuant to T.R.C.P. 56, and served at least thirty (30) days before trial. The adverse party may serve and file opposing affidavits, pursuant to T.R.C.P. 56, not later than five (5) days before the hearing. Unless oral argument is requested on the motion, the Court shall rule on the record, once notified by the Clerk that the moving party has alerted the Clerk's Office that the file is in a posture for the Court to go forward with its decision on the summary judgment motion.

**Section 7.08 Motions *In Limine***

Motions *in limine* shall be filed no less than three (3) business days before trial and set for hearing before the trial.

**Section 7.09 Recusal Motions**

Motions for recusal of the Chancellor shall be in writing and filed so as not to delay trial.

**Section 7.10 Drawing Order, After Motion Hearing**

Counsel for the prevailing party, unless otherwise designated by the Court, shall prepare and submit, within five (5) business days, an order reflecting the decision in every motion hearing.

**Section 7.11 Failure To Appear**

If the attorney or party filing the motion does not appear at a scheduled hearing on the motion or any other matter scheduled to be heard, the Court may strike, overrule, or otherwise dispose of the motion or other matter.

**RULE 8: NEGOTIATIONS AND SETTLEMENTS**

**Section 8.01 Award of Expenses**

All counsel in an action shall be equally responsible for timely notifying the Clerk and witnesses of the settlement of the action.

If any case is settled and notification as described in the above paragraph is later than 3:00 p.m. the business day preceding the trial, the Court may award compensation to witnesses for lost income and/or travel expenses and tax the same as costs. All orders of settlement must state the trial date, if same has been previously set. See also Rule 19.04 [RE: costs of the jury).

**Section 8.02 Court Approval of Settlements**

All joint petitions for the approval of workers' compensation, legitimation and minors' claims must be filed with the Clerk before being presented to a judge. In the event a minor or incompetent person is not represented by counsel, the Court may require that a Guardian *ad litem* be appointed for the person if the Court is not satisfied with the proposed settlement, and in that event, the fee of said Guardian *ad litem* shall be taxed as part of the costs.

**Section 8.03 Presentment of Settlements**

Proposed workers' compensation settlements, as well as other settlements, and statutorily allowed *ex parte* matters may be presented for approval before the opening of Court. See Local Rule 2, *supra*.

## **RULE 9: COURT REPORTERS and INTERPRETERS**

It is the responsibility of counsel to arrange for court reporters. Proceedings shall not be postponed or delayed because of a court reporter's absence or tardiness. It is the responsibility of counsel to arrange for interpreters, approved by the Court; and the Court shall appoint an interpreter according to the preference listed below and pursuant to Tenn. Sup. Ct. Rules 41 and 42:

1. State certified court interpreter;
2. State registered court interpreter;
3. Non-credentialed court interpreter.

See, Local Rule 35, *infra*.

## **RULE 10: SETTING CASES FOR TRIAL, CONTINUANCES, DORMANT CASES**

### **Section 10.01 Method of Setting**

Cases shall be set for trial in one of the following ways and by the filing of a **Certificate of Readiness** as set forth in Section 10.02 following:

(A) By agreement of counsel, *after consultation with the Clerk*.

(B) By the Court at periodic docket soundings. Motions which have been filed since the last Docket Sounding and remain pending without disposition shall be set at the next Docket Sounding;

(C) By motion, after consultation with the Clerk, and subsequent order;

(D) By the Court with notice to counsel, with Rule 10.02 not applying;

(E) In Hancock County, by the Clerk with notice to all counsel or parties, if unrepresented by counsel, with Rule 10.02 not applying.

### **Section 10.02 Certificate of Readiness**

The Clerk and Master shall docket no matter for the Court's consideration, either a trial or a hearing, that would require more than thirty (30) minutes to conclude, unless a **Certificate of Readiness** is filed within at least five (5) business days of the trial/hearing date, signed by all counsel of record, which shall recite the language found in the following example.

In the event a **Certificate of Readiness** is not timely filed within the above stated time, the case shall be removed from the 9:00 o'clock docket, considered a contingent setting, and placed at the bottom of the subject date's docket. In the event a **Certificate of Readiness** is not filed within the above stated time, the case shall be removed from the Court's docket for that day. In the event counsel is unable to procure all required signatures on said certificate, he/she may pursue: #1. a pretrial conference with the Court pursuant to Rule 10.05 and T.R.C.P. 16 or #2. file a motion asking the Court to enter a **Certificate of Readiness** and set the matter. [Said motion should state that the matter is at issue and adverse counsel refuses to sign the **Certificate of**

**Readiness.]**

Continuances in a case in which a **Certificate of Readiness** has been filed are governed specially by Rule 10.06. No Certificate of Readiness shall be required where the defendant is in default and the trial is to be *ex parte*.

~~~~~

**RE: Certificate of Readiness EXAMPLE**

**IN THE THIRD JUDICIAL DISTRICT FOR THE STATE OF  
TENNESSEE [NAME OF COUNTY] CHANCERY COURT, SITTING IN  
(NAME OF TOWN)**

**JOHN DOE**

§

**VS.**

§

**DOCKET NO. \_\_\_\_\_**

**RICHARD ROE**

§

**CERTIFICATE OF READINESS**

1. After consultation with the Clerk and Master, the undersigned  
(being all counsel of record in this cause or *pro se* parties), hereby agree to set this matter  
for TRIAL/HEARING on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, at 9:00 A.M., at the following location: \_\_\_\_\_ .

(B) Any court ordered mediation has been concluded, or will be concluded, prior to the  
trial/hearing.

(C) All parties have had reasonable time to be ready for the trial/hearing.

(D) All necessary preparation, as well as all necessary or desired discovery, has been taken.

(E) All exhibits promised have been delivered.

(F) All witnesses have been identified and located, insofar as deemed possible.

(G) This matter is ready to go forward and will require no more than \_\_\_\_\_ hours of  
the Court's time to conclude. \*

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Attorney/Pro Se Party*

\_\_\_\_\_  
*Attorney/Pro Se Party*

**\* In the event the time estimation is determined to be inaccurate, after the filing of the  
Certificate of Readiness, same shall be immediately brought to the attention of the Clerk, in  
an effort for the Court to determine if the scheduled trial/hearing may go forward on the  
scheduled date. See Local Rule 10.03, *infra*.**

~~~~~

**Section 10.03 Setting of Cases at Docket Soundings**

HAMBLLEN COUNTY: The docket will be sounded the first Tuesday of the months of February,  
June and October. Insofar as possible, cases will be set for trial in the months of April, August  
and December.

HAWKINS COUNTY: The docket will be sounded on the first Tuesday of the months of April, August and December. Insofar as possible, cases will be set for trial in the months of February-March, June-July, and October-November.

GREENE COUNTY: The docket will be sounded the first Wednesday in the months of March, July and November. Insofar as possible, cases will be set for trial in the months of January-February, May-June, and September-October.

If the date of any docket sounding should fall on a holiday, the docket will be sounded on the next business day following such holiday.

The ultimate responsibility for attendance at docket sounding lies with the attorney, or with the party if unrepresented by an attorney, inasmuch as the date of docket soundings are set by this Rule. Further, it shall be the responsibility of the attorneys (or the party, if not represented by an attorney) to learn of the date the case is set for trial **and, immediately after Docket Sounding**, file proof that all other attorneys or parties, in the cause, have been notified, in writing, of said date; *the Clerk will not notify attorneys or litigants of trial settings.*

#### **Section 10.04 Time Estimation given at Docket Sounding**

When a case is set at Docket Sounding, or set with the Clerk, a reasonable and realistic time estimation for the case to conclude shall be given by the attorney setting the case. Said time estimation shall be compared with the time declared in the filed Certificate of Readiness, with the case's place setting subject to change if not compatible with the Court's previously determined docket for that day.

#### **Section 10.05 Deadline for Trial Preparation**

Attorneys shall use all diligence to make use of T.R.C.P. 16 concerning the pretrial stages of litigation for scheduling and planning conferences. See also Rule 11 for "Pre-Trial Procedure and Briefs." When a party objects to having a case set because trial preparation is not complete, the Court may establish a deadline for completing trial preparation. See also Local Rule 10.02, *supra*.

#### **Section 10.06 Continuances**

(A) Cases shall not be continued by agreement and shall be continued only by leave of the Court evidenced by a signed and entered order. Cases shall not be continued except for good cause which shall be brought to the attention of the Court as soon as practicable before the date of trial.

(B) Absence of a witness who resides in the county where trial is to be held and who has not been served with a subpoena shall not be grounds for postponement of trial unless:

- (1) a subpoena for that witness was issued by the Clerk and Master not less than ten (10) days prior to trial and which subpoena was to be served by the sheriff or his designee; and
- (2) the testimony of the witness is material and the facts to be elicited from that witness cannot be supplied from another source; and
- (3) it is shown that the witness is reasonably subject to service of the subpoena.

(C) Absence of a witness who resides in a county other than the county of trial who has not been served with a subpoena shall not be grounds for postponement of trial unless:

- (1) the subpoena for that witness was issued by the Clerk and Master not less than twenty-one (21) days prior to trial and which subpoena was to be served by the sheriff or his designee of the county of the witness' residence; and
- (2) the testimony of the witness is material and the facts to be elicited from that witness cannot be supplied from another source; and
- (3) it is shown that the witness is reasonably subject to service of the subpoena.

(D) It shall not be grounds for postponement of trial that a witness is absent due to the failure or inability of an attorney or his/her agent to serve that witness with a subpoena to testify.

**Section 10.07 Award of Fees and Expenses**

In cases continued, the Court may award expenses and attorney's fees, where permitted by statute, including compensation to witnesses for lost income and/or travel expenses, and tax the same as Court costs.

**Section 10.08 Dismissal of Dormant Case**

To expedite cases, the Court may take reasonable measures to purge the docket of old cases where the cases have been dormant without cause shown for an extended time. After a cause is filed and three (3) Docket Soundings have passed without either party setting the cause for trial on the trial docket, counsel will file with the Court, in proper form, the reasons which they might reasonably be expected to set the cause for trial. In the event the above provisions are not met, the Clerk may set the case for hearing with notice to counsel and parties to prosecute the action. If the party seeking relief fails to appear, the action shall be dismissed without prejudice. A suggested guide for an Order is printed herein below. In the event counsel does not prepare said order on the hearing date, the Clerk will prepare same and submit the order to the Court for approval. "Tenn. R. Civ. P. 41.02(1) does not explicitly require the trial court to give a plaintiff notice before dismissing a complaint for failure to prosecute." *Hessmer v. Hessmer* 138 S.W.3d 901 (Tenn. Ct. App. 2003)

~~~~~  
**RE: Order of Dismissal For Failure To Prosecute EXAMPLE**

**IN THE THIRD JUDICIAL DISTRICT FOR THE STATE OF  
TENNESSEE [NAME OF COUNTY] CHANCERY COURT, SITTING IN  
(NAME OF TOWN)**

**JOHN DOE**

§

**VS.**

§

**DOCKET NO. \_\_\_\_\_**

**RICHARD ROE**

§

**ORDER TO DISMISS**  
**FOR FAILURE TO PROSECUTE**

At the last sounding of the docket of this Court, which was held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ this case was set for trial on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; reference is made to Local Rule of Practice 10.03. On the appointed day of trial, the petitioning party failed to appear.

This cause is dismissed for failure to prosecute. Under the authority of T.R.C.P. 41.02(3), THIS DISMISSAL IS WITHOUT PREJUDICE..

Costs are taxes to the petitioning party.

ENTER this the the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CHANCELLOR THOMAS R. FRIERSON, II

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**RULE 11: PRE-TRIAL PROCEDURE AND BRIEFS**

**Section 11.01 Disclosure Requirements; Briefs**

(A) Perusal of exhibits by the opposing party during the trial causes unnecessary delay and shall be avoided. If requested by the opposing party prior to the commencement of trial, a party shall make available to the opposing party for inspection or copying, or both, all exhibits to be used or which may be used during the trial, excluding exhibits which will be used strictly for purposes of impeachment.

(B) The original of depositions to be used as evidence (other than for impeachment) shall be filed no later than twenty-four (24) hours before trial with the Clerk.

(C) The use of pre-trial briefs is encouraged. If possible, same should be furnished to the Chancellor at his permanent office address at least twenty-four (24) hours in advance of the time of trial. Such briefs shall contain a cogent and orderly recitation of the facts expected to be proven, and a statement of the law (with appropriate citations) applicable to such facts. Arguments in such briefs regarding factual matters are inappropriate and shall be avoided. Copies of such pre-trial briefs shall be furnished to all opposing counsel or parties simultaneously with the furnishing of the original to the Chancellor.

(D) Pretrial Conferences. Pretrial conferences shall be held pursuant to T.R.C.P. 16 in appropriate cases. Such conferences may be held upon application of any party or by court order. An order reflecting the action taken at the pretrial conference shall be prepared by counsel. A suggested guide for such order is printed herein below. See also Local Rule 10.05, *supra*.

~~~~~  
**RE: Pre-Trial Order EXAMPLE**

**IN THE THIRD JUDICIAL DISTRICT FOR THE STATE OF  
TENNESSEE [NAME OF COUNTY] CHANCERY COURT, SITTING IN  
(NAME OF TOWN)**

**JOHN DOE**

§

**VS.**

§

**DOCKET NO.** \_\_\_\_\_

**RICHARD ROE**

§

**PRE-TRIAL ORDER**

The above captioned cause was set for pre-trial conference on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at 8:30 a.m., or as soon thereafter as possible, with counsel for all parties attending. The following matters were determined:

- (A) The trial of this cause shall take approximately \_\_\_\_\_ and is presently docketed for the \_\_\_\_\_ day(s) of \_\_\_\_\_, 20\_\_\_\_\_.
- (B) The trial will be \_\_\_\_\_ non-jury \_\_\_\_\_ jury.
- (C) The parties are to supply the names and addresses of all **witnesses**, including expert witnesses, to be used at trial, to opposing counsel, and file them with the Clerk by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. Failure to list a witness' name shall result in the witness not being allowed to testify, without a showing of good cause for not listing the witness.
- (D) Any **exhibits** which will be introduced at trial shall be available for viewing by opposing counsel by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. A list of the exhibits shall be filed with the Clerk by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
- (E) The hearing of the **pre-trial motions** is set for the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
- (F) Any **stipulation** of the parties shall be reduced to writing and filed with the Clerk by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
- (G) The parties shall file all proposed jury instructions, if a jury trial, by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.
- (H) The proposed Special Verdict Form, if a jury trial, shall be filed with the Clerk by the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ENTER this the the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
CHANCELLOR THOMAS R. FRIERSON, II

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(E) Expert Witnesses. Any party who plans to call an expert witness to testify shall submit the witness' name, address, field of expertise, and brief summary of qualifications and opinions to the court and other counsel no later than seven (7) days before the deposition or other personal appearance of the witness. Failure to comply with this requirement may result in disqualification of the witness. No party shall call more than two (2) experts on any issue without permission of the Court.

(F) Witness and Exhibit Lists. Upon motion of any party or *sua sponte*, the Court may order the pre-trial filing of Witness and/or Exhibit lists.

(G) Voluntary Dismissals. When a written notice of dismissal is filed pursuant to T.R.C.P. 41.01, the notice shall be followed by an Order of Voluntary Dismissal signed by the Court and entered by the Clerk.

(H) Recusal. It shall be the responsibility of the movant of a recusal motion to request an interchange with another judge, pursuant to Supreme Court Rule 11.

(I) Written Discovery.

1. A party invoking T.R.C.P. 31, 33 or 36 shall number each question or proposed admission and leave a blank space reasonably calculated to enable the responding person to have his/her response typed in the space provided. A party invoking T.R.C.P. 33 or 36, shall be limited to a total of thirty (30) interrogatories, including sub-parts, as well as limited to the same number of requests for admissions, including sub-parts. Interrogatories and requests for admissions shall be made in separate filings and not within the same document.

2. Responses to Written Discovery. The responding person shall use the space provided for the response. If the space is insufficient to complete the response, the response shall be continued on an added page with the properly designated response number.

(J) Accountings and Construction Suits. In any case involving a complicated and/or lengthy accounting or a construction case, the attorneys shall immediately notify the court and opposing counsel or party, so that the judge may consider appointing a special master or other appropriate person to take the accounting and make a pretrial report, or may order mediation.

(K) Mediation or Arbitration. Counsel shall promptly submit an order reflecting any mediation or arbitration ordered by the Court, as well as promptly submit a statement reflecting the outcome of any mediation or arbitration. See also Rule 39, *infra*.

## **RULE 12: EXHIBITS**

### **Section 12.01 Depositions and Discovery Material**

Depositions and discovery material submitted to the Court as evidence, which are not read to the Court, shall be made trial exhibits.

### **Section 12.02 Custody of the Clerk**

All trial exhibits shall be accounted for by counsel, before leaving the Courtroom, and placed in the custody of the Clerk unless otherwise directed by the Court.

### **Section 12.03 Disposition of Exhibits/Depositions**



After final determination of any case, the parties shall have forty-five (45) days after the entry of the final judgment to withdraw exhibits and depositions if no appeal is filed. The Clerk may destroy or dispose of exhibits and depositions not so withdrawn.

## **RULE 13: REQUESTS FOR SPECIAL INSTRUCTIONS, SPECIAL VERDICTS AND FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Section 13.01 Special Verdicts, Jury Interrogatories and Requested Instructions**

In jury cases where special verdicts or jury interrogatories are requested or required, or special requests for instructions are to be made, the parties shall file same and submit copies to the Chancellor at least five (5) business days prior to trial.

### **Section 13.02 Requests for Special Instructions**

When counsel submits special requests pursuant to T.R.C.P. 51, same shall be in compliance with Section 13.01 above and copies shall be furnished to adversary counsel. When a request for an instruction is made and the request is for a Tennessee Pattern Jury Instruction verbatim, the request shall be made by reference to "TPI (Civil) No: \_\_\_\_." If the request is for a modification of an existing instruction, the request shall identify the instruction to be modified by number and identify the deletion or addition. When a request for an instruction is made and there is no instruction on the subject in the Tennessee Pattern Jury Instructions, this fact must be stated in the request.

### **Section 13.03 Special Verdicts**

Requests for special verdicts or written interrogatories made pursuant to T.R.C.P. 49 shall be made before commencement of the trial, in compliance with Section 13.01 above, and shall be accompanied by proposed verdict forms, written interrogatories, and proposed instructions which will be given to the jury along with the special verdict forms or interrogatories. The Court will inform counsel of its proposed action on the requests prior to their arguments to the jury.

### **Section 13.04 Written Findings and Conclusions**

Requests for written findings of fact and conclusions of law shall be accompanied by *proposed* findings of fact and conclusions of law and submitted, in writing, prior to the entry of judgment. The Court may decline to make written findings and conclusions if findings and conclusions have been stated from the bench and in accordance with T.R.C.P. 52.

## **RULE 14: ORDERS AND JUDGMENTS**

### **Section 14.01 Preparation and Submission of Orders and Judgments**

(A) All Orders and Judgments shall be lodged with the Clerk within fourteen (14) days of the Court's ruling, unless longer time is granted by the Court. Failure to comply with this provision may result in issuance of show cause orders.

(B) Unless the Court directs otherwise, counsel for the prevailing party shall prepare Orders or Judgments in conformance with the Court's ruling. The attorney preparing the Order and

Judgment shall approve same and present to all other counsel in the case, who shall approve or disapprove same Order or Judgment and return to the attorney preparing same within three (3) business days of their receipt of the Order or Judgment. The attorney shall then lodge the Order or Judgment with the Clerk.

(C) No Order or Judgment shall be lodged with the Clerk unless it contains the signature of all counsel or a certificate pursuant to Rule 14.02 and 14.03.

#### **Section 14.02 Same: Alternate Method**

In the alternative, counsel for the prevailing party shall prepare such Order or Judgment and lodge same with the Clerk within three (3) days of the Court's ruling. A copy of the Order or Judgment shall be served upon all opposing counsel and shall bear a proper certificate of service, as provided in T.R.C.P. 58. If opposing counsel objects to the proposed Order or Judgment, he/she shall so advise the Clerk, in writing, within five (5) days of his/her receipt of such copy, and proceed in accordance with Rule 14.03 following.

#### **Section 14.03 Disagreements Over Contents of Orders and Judgments**

In the event of a dispute concerning the content or wording of an Order or Judgment, each party shall lodge with the Clerk a proposed Order or Judgment within fourteen (14) days of the Court's ruling, each Order or Judgment shall contain a proper certificate of service certifying that a copy of the proposed Order or Judgment has been served upon opposing counsel pursuant to T.R.C.P. 58. The parties shall point out to the Court the specific provision(s) in the competing versions of the judgment/order about which there is a disagreement.

#### **Section 14.04 Court Costs**

(A) All final judgments shall provide for the taxing of Court costs.

(B) Whenever it appears to the Clerk that a judgment has been satisfied but that Court costs have not been paid, the Clerk may apply to the Court for a re-taxing of Court costs. The Clerk shall notify the parties of the application and the date and time it is to be considered by the Court. See, T.C.A. 20-12-137.

#### **Section 14.05 Non-Minute Entry Orders**

Orders not affecting the legal course of an action, such as orders setting a case for trial or acting upon a request for a continuance, may be designated by the Clerk as a non-minute entry order. Such designated orders shall be placed in the file of the case; same may also, within the discretion of the Clerk, be spread upon the Minutes of the Court.

#### **Section 14.06 Payment and Satisfaction of Judgments**

(A) Orders for disbursing funds, other than agreed orders, shall be final before the Clerk will disburse the funds, and

(B) Funds paid into the Court by check shall not be disbursed until cleared by the banking institution.

(C) Upon receipt of payment in satisfaction of a judgment, whether through the Clerk's office or otherwise, counsel shall satisfy the docket by certifying receipt of same by making the appropriate filing.

#### **Section 14.07 Orders of Substitution of Counsel**

All orders of substitution of counsel shall not delay or prejudice the trial of the case. See also Local Rule 3.02, *supra*.

#### **Section 14.08 Non-Party Reference**

When the Court orders a non-party (i.e., social agency, etc.) to make a report to the Court, the order shall advise the non-party to include in its report the name of the Court and the civil action number.

#### **Section 14.09 Reservation by Order**

All orders which reserve some matter for final disposition shall state with particularity what is being reserved in conspicuous language; and counsel shall cause the matter to be set for remaining disposition at the next Docket Sounding.

#### **Section 14.10 Appointments**

The attorney preparing the order appointing a Guardian *ad litem*, special master, receiver, etc., shall have the obligation to ensure that the appointed individual is served with a copy of the order. The appointment of Guardians *ad litem*, as well as other like positions, shall be made, when possible, on a rotational basis and after consultation with the Court. See also Local Rules 23.06 and 25, *infra*.

#### **Section 14.11 Entry of Orders and Judgments**

An order/judgment is not “entered” until signed by the Chancellor and marked “entered”/“filed” by the Clerk. The Court may sign a submitted order/judgment or may draft its own. The Clerk shall forward a copy of the entered order/judgment to counsel, only if directed by the Court or requested by counsel to do so, pursuant to T.R.C.P. 58.

### **RULE 15: SPECIAL PROCEDURES FOR DIVORCES**

See also Local Rules 28 and 30, *infra*.

#### **Section 15.01 Uncontested Divorce Cases**

(A) Where a divorce case is grounded on irreconcilable differences, it is not necessary to move for a default judgment. Once the statutory requirements have been met, such cases may be set for hearing by consultation with the Clerk of the Court or, by leave of the Court.

(B) When a defaulted party desires to be heard on any matter other than the basic cause of action, he/she shall notify the Court at least seven (7) days prior to the hearing of the matters upon which he/she desires to be heard and shall file a brief statement of his/her contention in regard to such matter.

#### **Section 15.02 Contested Divorce Cases; Financial Information**

All contested divorce actions shall be submitted to Supreme Court Rule 31 mediation before the case is set for trial, as well as before setting the matter for a *pendente lite* hearing.

A Certificate of Readiness shall be required in all contested divorce actions, unless the defendant is in default and the trial is to proceed *ex parte* and will conclude before using more than thirty (30) minutes of the Court's time. See Local Rule 10.02, *supra*.

~~~~~  
**EXAMPLE: Certificate of Readiness For Trial For Contested Divorce Cases**

IN THE THIRD JUDICIAL DISTRICT FOR THE STATE OF  
TENNESSEE [NAME OF COUNTY] CHANCERY COURT, SITTING IN  
(NAME OF TOWN)

JOHN DOE

§

VS.

§

DOCKET NO. \_\_\_\_\_

RICHARD ROE

§

**CERTIFICATE OF READINESS FOR TRIAL  
FOR CONTESTED DIVORCE CASES**

The undersigned hereby certify that:

- (A) the case is at issue;
- (B) the grounds for Divorce have been ascertained insofar as they can be;
- (C) all necessary or desired discovery has been taken and all exhibits promised at depositions have been delivered;
- (D) the parties have had reasonable time to be ready for trial;
- (E) all witnesses have been located, insofar as deemed possible;
- (F) the case is ready for trial in all respects and will require no more than \_\_\_\_\_ hours of the Court's time to conclude;
- (G) a list of assets including marital property, separate property and inherited property has been filed, pursuant to the "joint, and single, statement of assets and liabilities" herein described in Rule 15.02, along with a proposed division of said assets;
- (H) an expense sheet will be filed listing all expenses and income, pursuant to the "joint, and single, statement of assets and liabilities" herein described in Rule 15.02;
- (I) if applicable, both parties certify they will present as evidence at the hearing in this cause any and all information pertaining to health insurance conversion under the COBRA law which may be applicable to either party to ensure continuous insurance coverage.

THEREFORE, ALL COUNSEL REQUEST THAT THE CAUSE BE PLACED ON THE TRIAL DOCKET.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Attorney/*Pro Se* Party

\_\_\_\_\_  
Attorney/*Pro Se* Party

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In all contested divorce cases, the parties and their attorneys shall meet and cause to be prepared a joint, and single, statement of assets and liabilities which shall include a listing and description of all real property owned by the parties, or by either of them (including date acquired, and identity of all owners); any encumbrances against said real properties (including identity of mortgagees, amount of monthly payments, and outstanding balances owing thereon); a general description of all personal properties owned by the parties, or by either of them, including estimated value of same and any encumbrances against same (including identity of mortgagees and full description of encumbrances); a full description of all debts of either party, including identity of creditors, amount of any monthly payments, and balance of debt owed; and the income of both parties, including the identity of the employer and the nature of the employment.

**If the parties disagree with respect to any of the information required above, the opposing or differing information may be supplied, but nevertheless within the single statement required by this rule.**

Failure to furnish the above financial information to the Court at least five (5) business days before trial, in the format required, may result in appropriate sanctions, including, but not limited to, a continuance of the case. **It will be presumed that the statement required by this rule describes all the property, real and personal, owned by these parties.**

### **Section 15.03 Designation of Parties**

In the complaint, answer and other pleadings it is requested that the parties or counsel avoid such terms as plaintiff, defendant, counterplaintiff and counterdefendant, using instead such easily understood references to the parties as husband and wife.

### **Section 15.04 *Pendente Lite* Hearings, For Spousal Support Only**

Complaints for divorce which include requests for *pendente lite* relief shall include a statement of facts justifying the relief sought and such relief shall only be considered by the Court after mediation has failed.

In any action requesting spousal support *pendente lite* relief and child support is NOT at issue, oral testimony by witnesses in support of or in opposition to a request for *pendente lite* relief shall not be allowed except by leave of Court, nor shall there be oral argument on any motion for *pendente lite* relief except by leave of Court. The party requesting *pendente lite* relief shall submit affidavits in support of his/her request, which affidavits shall state with particularity the incomes and expenses of the parties, the amount of temporary support requested, and any other information pertinent to the requested relief. All such affidavits shall be served upon the opposing party or his or her attorney, conspicuously referring to Local Rule 15.04, either (1) along with a summons or (2) pursuant to T.R.C.P. 58. Said certificate shall refer to this Local Rule 15.04 which advises the opposing attorney that he/she has fifteen (15) days within which to file affidavits in opposition to the request for *pendente lite* relief. Failing therein, the Chancellor will enter an order based upon the affidavits of the movant alone. Within fifteen (15) days of being served with the affidavits in support of the request for *pendente lite* relief, the opposing party may serve upon movant's attorney (or movant personally, if unrepresented by an attorney)

affidavits in opposition to the request, which affidavits will state the respective incomes and expenses of the parties, any reason why the amount requested by movant is unreasonable, and any other information pertinent to the issue. If such opposing affidavits are not filed within fifteen (15) days, the Court will proceed to consider the matter on the basis of the movant's affidavits alone.

Requests for *pendente lite* relief, and affidavits in support thereof, may be forwarded directly to the Chancellor after the time has expired for the filing of any opposing affidavits. If affidavits in opposition to requested relief have been filed, it shall be the responsibility of movant to forward such opposing affidavits, along with the supporting affidavits to the Chancellor. No application for *pendente lite* relief that has been forwarded directly to the Chancellor will be acted upon unless all opposing affidavits and pleadings have been included in the mailing or movant certifies by letter that the time has expired for the filing of a response and that no such response has been made by the opposing party.

#### **Section 15.05 Restraining Order to Vacate Residence**

Restraining Orders ordering a party to a divorce suit to vacate the residence shall be issued only under the most compelling circumstances. Further, any restraining order ordering a party to a divorce action to vacate the residence premises shall provide therein for a hearing on a temporary injunction, to be set not later than five (5) days after issuance of the restraining order, such hearing to determine whether the restraining order be converted into a temporary injunction or dissolved entirely. No restraining order ordering a defendant in a divorce action to vacate the residence premises shall be signed and issued without the provision for hearing on temporary injunction, as aforesaid.

#### **Section 15.06 Proof of Grounds for Divorce**

Proof of grounds for divorce shall be required in all divorce cases, including default situations, except when grounds are stipulated and/or based upon irreconcilable differences. See Hyneman, 152 S.W.3<sup>rd</sup> 549; 2003 Tenn. App. LEXIS 680 (Tenn. Ct. App. *Sept. 18, 2003*).

#### **Section 15.07 Minor Child Witness in Custody Hearing**

It is recommended that minor children who are called to testify in a custody hearing shall remain in school and/or in their usual and customary environment, maintaining a normal schedule if possible, until called to testify.

### **RULE 16: SPECIAL PROCEDURES FOR ADOPTIONS/SURRENDERS**

#### **Section 16.01 Filing**

All adoption complaints shall be filed with the Clerk, and venue cannot be waived.

#### **Section 16.02 Requirements for Setting Adoption Cases**

In any case wherein the adopting parents are related to the child or children to be adopted, the case shall not be set for adjudication by the Clerk until the following documents have been filed:

- (A) The birth certificate or certificates of the child or children.
- (B) A certified copy of the marriage license of the adopting petitioner(s), if applicable.

- (C) A certified copy of any current order/judgment affecting the custody of the child/children.
- (D) A death certificate if either natural biological parent be deceased.
- (E) A copy of the Putative Father Registry report within 10 days of the filing of the petition..
- (F) Any confidential report, filed at least three (3) days prior to the adoption hearing.

### **Section 16.03 Presentation of Testimony in an Adoption**

The testimony of adopting petitioners will be heard in chambers. This testimony may be presented in person or, in the event the adopting petitioners are not within the State of Tennessee at the date of the adjudication, their testimony may be presented by interrogatory or deposition.

### **Section 16.04 Attendance of Adoptive Child**

It shall be optional with the adopting petitioners as to whether the child or children involved in said adoption attend the adjudication, unless the child is fourteen (14) years old or older.

### **Section 16.05 Setting of Adoption Hearing**

A contested adoption case shall be set with expediency and pursuant to applicable statutes, but with the same requirements as any other case. See Local Rule 10, *supra*.

### **Section 16.06 Adoption Surrenders**

Surrenders are normally scheduled as *ex parte* matters, and surrender forms shall be filled out before same are presented to the Chancellor. The Clerk shall not be permitted to assist in preparing surrender forms.

### **Section 16.07 Confidentiality of Records**

All documents filed in the context of a surrender or adoption action, and the information contained in those documents, are confidential and may not be disclosed, except when the law allows and upon presentation of appropriate credentials. Only the parties to an adoption action and/or their attorney, or others statutorily authorized, i.e. child-placing agency, may have access to a pending adoption record.

## **RULE 17: SPECIAL PROCEDURES FOR EXTRAORDINARY INTERLOCUTORY RELIEF**

### **Section 17.01 Assignment of Cases**

Complaints for writs of certiorari, restraining orders or other extraordinary relief shall be filed with the Clerk and shall then be presented to the Chancellor or to another Judge if the Chancellor is unavailable.

### **Section 17.02 Restraining Orders**

Proposed restraining orders shall be prepared by counsel prior to submitting the request for relief to the Court. Every restraining order, other than one in a domestic relations case, shall provide for the setting of a hearing for a temporary injunction and shall provide a place thereon for the Court to set a date, time and location for such a hearing. *Pro forma* restraining orders should be avoided. A change in custody of children shall not be effected by a restraining order.

### **Section 17.03 Setting Hearing for Interlocutory Relief**

Hearings on applications for temporary injunctions and other forms of extraordinary interlocutory relief shall be set as provided in Rule 17.02, or in cases where no restraining order is issued, (1) upon notice after consultation with the Clerk or (2) by an order setting the date, time and location for the hearing.

### **Section 17.04 Hearings for Interlocutory Relief**

All requests for temporary injunctions and other forms of extraordinary interlocutory relief shall be heard upon oral testimony.

## **RULE 18: SPECIAL PROCEDURES FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS**

### **Section 18.01 Special Procedures**

In any case in which judicial review of an administrative decision is being sought, the words “**JUDICIAL REVIEW**” shall be typewritten, or printed, in capital letters on the first page of the lead pleading opposite the style of the case and above the space for the case number.

### **Section 18.02 Briefs Required**

Briefs must be filed in all cases which are to be considered by the Court upon a record from an administrative tribunal or agency. If a petitioner-appellant fails to file his/her brief within the time provided by this rule or within the time ordered by the Court, the action may be dismissed and the agency decision affirmed. If the defendant-appellee has not filed his/her brief within the time provided by this rule or within the time ordered by the Court, the Court may decide the case upon the record and the petitioner-appellant's brief .

### **Section 18.03 Filing and Service of Briefs**

The petitioner-appellant must file and serve a brief within fifteen (15) days after the record is filed. The defendant-appellee must file and serve a brief within fifteen (15) days after service of the brief of the petitioner-appellant. Reply briefs may be filed at the option of a party, and if filed, must be filed and served within fifteen (15) days after service of the preceding brief. Upon motion of a party or upon its own motion, the Court may enlarge or shorten the time for filing briefs.

### **Section 18.04 Consolidated Briefs**



In cases involving multiple parties and cases consolidated for judicial review, any number of parties may join in a single brief and any party may adopt by reference any part of the brief of another party. Parties may similarly join in reply briefs.

## **RULE 19: JURY TRIALS**

### **Section 19.01 Procedure**

When a case is to be tried to a jury, the words "**JURY DEMAND**" shall be typewritten in bold capital letters on the first page of the pleadings opposite the style of the case above the space for the case number, and counsel shall call that fact to the attention of the Clerk when the case is filed. A pre-trial conference pursuant to T.R.C.P. 16 shall be required at least 30 days before trial. Parties and counsel shall follow the jury selection process established by the court, a description of which may be obtained from the Clerk and Master's office.

### **Section 19.02 Number of Jurors**

In jury cases the parties may stipulate that the jury will consist of any number of persons less than twelve (12).

### **Section 19.03 Challenges**

The stipulation shall not affect the number of challenges nor the manner of making them.

### **Section 19.04 Taxing Juror Costs Upon Settlement**

If a case which is scheduled for a jury trial is settled and notification to the Clerk is later than 3:00 p.m. the business day prior to the date the case is scheduled to begin, the Court may tax jury expenses as Court costs. See also Local Rules 8.01 and 10.07, *supra*.

## **RULE 20: CLERK AND MASTER SALES**

### **Section 20.01 Sales To Be Conducted By Clerk and Master**

As a general rule, judicial sales will be conducted by the Clerk; the litigants shall not be allowed to employ an auctioneer except with the prior approval of the Court and for good cause shown.

### **Section 20.02 Advanced Bids**

It is contemplated that all sales will be final on the day of sale, subject of course to court confirmation. There will be no "advance bids" or bids received after the conclusion of the sale except under the most compelling and extraordinary circumstances and upon an entered Order of the Court.

### **Section 20.03 Costs of Sale**

In the discretion of the Court, costs estimated by the Clerk associated with the preparation of sale shall be advanced by the parties and paid into the Registry of the Court prior to the Clerk preparing for the sale.

### **Section 20.04 Failure to Finalize Sale**

In the discretion of the Court, in the event a sale fails to proceed to finality or is not confirmed by the Court, costs associated with that sale, as well as an amount of Special Commission, shall be considered as Court costs and shall be paid, by a specific time established by the Court, into the Registry of the Court.

## **RULE 21: REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES**

It shall be the policy of the courts of the Third Judicial District to assure that qualified individuals with disabilities have equal and full access to the judicial system. Nothing in this rule shall be construed to impose limitations or to invalidate the remedies, rights and procedures accorded to any qualified individuals with disabilities under state or federal law.

“Qualified individuals with disabilities” means a person covered by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101, et seq.) and includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities or who have a record of such impairments or who are regarded as having such impairment.

Applicant means any lawyer, party, witness, juror or any other individual with an interest in attending any proceeding before any court of the Third Judicial District.

Accommodations may include, but are not limited to making reasonable modifications in policies, practices and procedures; furnishing at no charge to the qualified individuals with disabilities auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and making each service, program or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. While not requiring that each existing facility be accessible, the standard known as “program accessibility” must be provided by methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility or provision of services at alternate sites.

Confidentiality applies to the identity of the applicant as part of the application process.

The following process for requesting accommodations is established:

1. Applications requesting accommodations pursuant to this rule may be presented ex parte in writing on a form approved by and provided by the court, or orally as the court may allow. Applications should be made at the designated office of the Clerk where the proceeding will take place or to the judicial officer who will preside over the proceeding.
2. Applications for accommodations shall include a description of the accommodation sought along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.

3. Applications should be made as far in advance of the requested accommodation's implementation date as possible, and in any event should be made no less than five (5) court days prior to the requested implementation date. The court may, in its discretion, waive this requirement.

4. Upon request, the court shall place under seal the identity of the applicant as designated on the application form and all other identifying information provided to the court pursuant to the application.

5. An applicant may make an ex parte communication with the court; such communications shall deal only with the accommodations the applicant's disability requires and shall not deal in any manner with the subject matter or merits of the proceeding before the court.

6. In determining whether to grant an accommodation and what accommodation to grant, the court shall consider, but is not limited by, the provisions of the Americans with Disabilities Act of 1990 and related state and federal laws.

7. The court shall inform the applicant in writing of findings of fact and orders, as may be appropriate, that the request for accommodation is granted or denied, in whole or in part, and the nature of the accommodation(s) to be provided, if any.

8. An application may be denied only if the court finds that:

(1) The applicant has failed to satisfy the requirements of this rule; or

(2) The requested accommodation(s) would create an undue financial or administrative burden on the court; or

(3) The requested accommodation(s) would fundamentally alter the nature of the service, program or activity.

An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by a presiding judge or any other judicial officer of a court within ten (10) days of the date of notice of denial or grant by filing a petition for extraordinary relief in a court of superior jurisdiction.

The accommodations by the court shall commence on the date indicated in the notice of accommodation and shall remain in effect for the period specified in the notice of accommodation. The court may grant accommodations for indefinite periods of time or for a particular matter or appearance.

Copies of this rule shall be provided to all Clerks serving the Third Judicial District, and shall be posted in the public areas of all court facilities.

## **RULE 22: PROBATE MATTERS**

### **Section 22.01 Attorneys**

Unless otherwise ordered, no one except an attorney licensed to practice law in Tennessee shall be permitted to represent an estate in matters coming before the Court.

### **Section 22.02 Petitions**

(A) Sworn petitions shall be filed for the administration of estates and for the appointment of all personal representatives, giving the name, residence, and date of death of the decedent, and also giving the name and address of the attorney for the estate.

(B) Sworn Petitions for probate of Wills and Codicils shall also give the dates of the execution of the Will and any Codicils, the names of all attesting witnesses, and whether the person named personal representative is excused from making bond.

(C) In all intestate estates, and in all testate estates where bond is not excused in the Will, the petitions shall give the character and estimated value of the personal estate, and shall also include the annual value expected to be received from the dividends, interest and profits from all property.

(D) The petitions shall also state that the petitioner is either not aware of any Will, or if there is a Will, of any other paper writing purporting to be the Last Will and Testament of the decedent, and that a due search and inquiry have been made to ascertain that there is either no Will, or no other Will.

(E) In intestate estates, the petitions shall also list the names, ages, relationships and addresses of all next of kin and heirs at law of the decedent.

### **Section 22.03 Inventory**

Unless excused according to law, an inventory of all personal property owned by the decedent at the time of death shall be filed for all estates within sixty (60) days from the date of the appointment of the personal representative. The Clerk and Masters or, in Greene County, the County Clerk, shall insure that an inventory is filed for each estate, as provided by law.

### **Section 22.04 Fees for Personal Representatives and Attorneys**

In all instances where the fees of a personal representative or attorney for the estate are to be fixed by the Court, a petition must be filed stating the fees that are being requested. The petition must also contain a certificate indicating that a copy of same, as well a copy of a notice of the date and time certain for the fee consideration, has been mailed or delivered to all persons entitled to notice. All fees requested must be determined at the hearing scheduled by petitioner.

All petitions for fees in estates shall be supported by an affidavit, including but not limited to the amount of time expended, the value of the estate if known, and an Order with a suggested fee penciled in.

If the fees requested are in excess of five thousand dollars (\$5,000.00) for any personal representative or attorney, the petition must be accompanied by the affidavits of two disinterested attorneys stating the amounts they consider to be reasonable fees. Any petition requesting a fee for a personal representative or any attorney in excess of five thousand dollars

(\$5,000.00) will be heard, on notice, by the Chancellor, instead of by the Clerk and Master or, in Greene County, by the County Clerk.

### **Section 22.05 Closing Estate of Deceased Person On Petition and Order in Lieu of Final Settlement**

An estate of a deceased person may be closed upon the sworn petition of the personal representative and an order in lieu of final settlement if:

- (1) The time for filing claims with the Clerk has expired;
- (2) No beneficiary is under disability and no trust is created in a Will;
- (3) Written evidence of satisfaction and release of all claims filed, release from the Bureau of TennCare and the payment of all inheritance and estate taxes is attached to the petition, or filed in the Clerk's office;
- (4) Every beneficiary has received his or her full share of the estate, and
  - (a) has either joined in the petition or signed a receipt in which the beneficiary waives notice and filing of the final settlement and acknowledges receipt of his or her full share of the estate, which receipt is attached to the petition; or
  - (b) the personal representative has filed a certificate that he has furnished notice to each beneficiary at his or her last known address of his intent to present the proposed settlement at a certain time, hour and place and that the beneficiary may appear at that time to voice any objections, which notice shall be accompanied by a "certificate of mailing."

### **Section 22.06 Final or Partial Settlements**

In all estates which are not closed as provided in Section 22.04 above, an itemized sworn settlement, with proper notice, must be filed by the personal representative with the Clerk within fifteen (15) months from the date of qualification as personal representative, and, if not a final settlement, each twelve (12) months thereafter until the estate is finally settled.

### **Section 22.07 All Final Orders Closing Estates to Be Lodged with Clerk and Signed by Chancellor**

All final Orders closing estates shall be lodged with the Clerk, who shall review same to determine if all requirements of Section 22.04 and 22.05 have been complied with. Thereafter, the findings of the Clerk shall be evidenced by a written report and filed, before presenting the final Order closing the estate to the Chancellor for signature.

### **Section 22.08 Neglect of Duty**

Any personal representative or any attorney of record who fails or neglects, for any reason, to perform his/her proper duty in probate matters, shall forfeit all compensation in addition to other appropriate sanctions.

### **Section 22.09 Master to Act**

(A) Notwithstanding the Clerk & Master in Greene County, who does not have probate jurisdiction, pursuant to T.C.A. 18-6-106 (a) (5), the duties listed in T.C.A. 18-6-106, concerning the "clerk of the court having probate jurisdiction", are in addition to those hereinafter listed, unless otherwise ordered by the Court. The Clerk and Master, including the Clerk & Master in Greene County, is empowered, without a specific order of reference to:

- (1) approve applications for letters testamentary and of administration;
- (2) adjudicate probate claims and exceptions thereto;
- (3) determine year's allowance to surviving spouse and minor children;
- (4) preside over assignment of homestead;
- (5) determine elective share of surviving spouse;
- (6) take and state all accounts and settlements; and
- (7) approve fee requests for a personal representative or attorney of \$5,000.00 or less. (See also Local Rule 22.04, *supra*)

(B) The Clerk shall file a written report of findings and actions for matters (2) through (7) above.

(C) Rule 53 of the Tennessee Rules of Civil Procedure and Rule 27 of these Rules shall govern the procedures for Master's hearings and exceptions to, or confirmations of Master's Reports.

## **RULE 23: CONSERVATORSHIPS AND GUARDIANSHIPS**

### **Section 23.01 Attorneys**

Unless otherwise ordered, no one except an attorney licensed to practice law in Tennessee shall be permitted to represent a ward or a fiduciary in matters coming before the Court in a Conservatorship or Guardianship case. However, fiduciaries, who are not licensed attorneys, may submit their annual and final accounting and apply for their annual and final fee requests without the intervention of a licensed attorney.

### **Section 23.02 Petitions**

A separate petition must be filed for each respondent. Separate docket numbers will be assigned to each petition and there shall be a separate Final Order in each case.

### **Section 23.03 Conservatorships**

The petition shall be verified and shall contain the information required by statute and these Rules. Petitioner shall list the names and addresses of all persons to whom notice is required. Notice shall be given by the Clerk. Service of process shall be provided by an authorized officer. A verified statement from a physician or psychologist in accordance with T.C.A. § 34-3-105 shall be filed, if available, with the petition. If not then available, the certificate must be filed before or at the hearing.

### **Section 23.04 Guardianships**

The petition shall be verified and shall contain the information required by statute and these Rules. Notice shall be provided to all interested persons, and service upon the respondent shall be in accordance with law.

### **Section 23.05 Guardian & Conservator Orders Submitted with Petition**

Orders appointing or waiving a Guardian *ad litem*, setting a hearing date and providing for the duties of the Guardian *ad litem* shall be submitted with each petition for conservatorship or guardianship.

### **Section 23.06 Guardian *ad litem***

(A) The Court will appoint a licensed attorney as the Guardian *ad litem* upon the filing of a petition to appoint a conservator or guardian; however, the Court may waive the appointment of a Guardian *ad litem* if good cause is shown. See also Local Rule 25, *infra*, as well as Local Rule 14.10, *supra*.

(B) The Court may appoint a Guardian *ad litem* in matters involving the sale, improvement, or mortgage of any real property in which a minor or other person under disability has an interest; in matters involving the sale or disposition of the ward's personal property; in matters involving possible impropriety by a fiduciary; in matters concerning unauthorized encroachments or questionable management of a ward's assets under guardianships or conservatorships; in any matter the Court believes to be in the best interest of a minor, incompetent, absentee or interested party or to further the administration of justice.

(C) The Guardian *ad litem* shall conduct an inquiry and file a report with the Court at least five (5) days prior to the hearing. The report shall contain the information required by statute and these Rules and such additional information the Court may require or the Guardian *ad litem* deems necessary. Reports are to be brief and to the point unless the complexities of the case require greater detail.

### **Section 23.07 Orders Appointing Conservator/ Guardian**

All orders appointing a guardian or a conservator shall contain the information required by appropriate statute and these Rules. The order shall provide the ward's full name, date of birth and Social Security number. The order shall also provide that an inventory within sixty (60) days and an annual accounting or annual report are required or waived. See also Local Rule 23.08(B). Orders appointing a representative shall adjudge the Clerk's cost.

Further, all orders appointing a guardian or conservator shall include the following language:

A copy of this order, even if certified, is NOT evidence of the conservator's or guardian's authority to act on behalf of the within named ward. The appointment of the conservator or guardian is effective only upon the issuance of *Letters of Conservatorship* or *Letters of Guardianship* by the Clerk & Master's office and the conservator's or guardian's authority to act on behalf of the ward is manifested only by such *Letters*.

Upon entry of the Order appointing the conservator/guardian, the fiduciary shall be required to meet with the Clerk and Master immediately.

### **Section 23.08 Subsequent Orders**

(A) Unless other matters are pending, orders approving accounting, sale of real estate or similar matters shall contain a provision that this matter is hereby closed pending further proceedings and a provision relating to the Clerk's cost.

(B) If an annual accounting is not required, an Annual Report shall be required each year and the Clerk will send notice of this Annual Report being due. The Annual Report shall contain

information as to the condition and location of the ward as well as other information as may be requested by the Clerk, such as who the caregiver is and if they are related to the ward.

**RULE 24: PRIVATE SALE OF PROPERTY OF WARDS AND MINORS**

Petitions to sell property of wards and minors shall be sworn to, shall state the reason why the property should be sold, and shall be accompanied by at least one sworn appraisal of the property by a competent expert. See also Local Rule 23.06(B), *supra*.

**RULE 25: APPOINTMENT OF GUARDIANS AD LITEM**

In all cases requiring the appointment of a Guardian *Ad Litem*, an Order appointing a Guardian *Ad Litem*, leaving blank the name of the Guardian *Ad Litem*, shall be prepared by the attorney representing the plaintiff or the petitioner. The Chancellor shall appoint the Guardian *Ad Litem* in all such cases. Such appointment shall be made upon a rotational basis, when possible, among the members of the local bar. See also Local Rules 14.10 and 23.06(B), *supra*.

**RULE 26: CLERKS AND MASTERS AND COUNTY CLERK IN GREENE COUNTY TO MAINTAIN SUSPENSE FILE OR OTHER REMINDER SYSTEM**

The Clerks will maintain suspense files or a tickler or other reminder system in order to monitor the due dates of Annual Accountings for Guardianships and Conservatorships, Inventories, and Partial or Final Settlements for Estates and Probate matters.

**RULE 27: APPEALS FROM MASTER'S REPORT**

An appeal from a Master's Report shall state specifically upon what grounds the appeal is prayed for and shall state whether it is a fact question or legal question appealed and said appeal shall:

- (A) Be supported by affidavit(s) if said appeal is upon a fact question;
- (B) Be supported by briefs(s) if the question appealed is a legal question or question of law;
- (C) Said affidavits and/or briefs shall be attached to said appeal when filed.

**RULE 28: PARENTING PLAN (T.C.A. 36-6-401, *et seq.*)**

**1. General Provisions:** This rule is adopted to promulgate procedures to be followed in the Courts of Record in the 3<sup>rd</sup> Judicial District of Tennessee so as to ensure that the intent of that legislation is carried out by those parties with children involved in domestic relations cases, by clerks, by attorneys, by providers (parenting plan educators and mediators), and by the courts. If any provision herein is found to be in conflict with the legislation, the legislation will prevail.



**2. General Order:** The General Order concerning the Parenting Plans for the 3<sup>rd</sup> Judicial District is hereby adopted.

**3. Duties of Clerks:**

A. When a complaint for divorce or petition for modification in a post-divorce case is filed with the Clerk's office, the Clerk shall make available the parenting plan package which is to be attached to the summons and made available to the filing party. If the filing party is represented by an attorney, the package shall be attached to the summons by the filing attorney. If the filing party is not represented by an attorney, the Clerk shall give the filing party a package. The same package will be included in the summons to the defendant/respondent.

B. Package Contents: The package shall contain the following:

- [1] The General Order and open letter from the judges;
- [2] The parents' guide to education seminar;
- [3] The parents' guide for mediation;
- [4] The parents' guide for developing a parenting plan;
- [5] A list of approved educational providers;
- [6] A list of mediators available in the district.

C. The following documents will be made available by the Clerks to attorneys and parents upon request:

- [1] Temporary Parenting Plan;
- [2] Permanent Parenting Plan.

D. Check List: A check list will be attached by the clerk to each case file involving divorce proceedings with minor children. The check list will be completed by the clerk as items are furnished to parties, or filed by parties, attorneys, providers, or the court.

**4. Duties of Attorneys:** Attorneys representing parents involved in divorce proceedings involving minor children shall:

- A. Secure from the clerk's office or otherwise all approved forms utilized under this rule;
- B. Furnish a copy of the package to their client and explain the contents to the client;
- C. Attach a copy of the package to any summons filed on behalf of plaintiff/petitioner;
- D. Monitor their clients' timely attendance at a parent education seminar.
- E. Assist the client in selecting/reaching agreement as to an appropriate mediator if a parenting plan has not been timely agreed to by the parties.
- F. Follow the Procedures for determining temporary and permanent parenting plans.
- G. Follow all procedures for Mediation, including the attorneys' guide to mediation.

H. The agreed or ordered parenting plan will be attached to the Marital Dissolution Agreement or Decree as an exhibit and will not be duplicated in the MDA or decree.

I. Submit to the judge for signature an Order to Mediate if the parties have not filed an agreed parenting plan within 120 days of service of process.

### **5. Procedure For Determining Temporary Parenting Plan:**

A. Upon filing the complaint for a divorce involving minor children, the plaintiff shall also file one of the following three “papers”:

(1) an agreed Temporary Parenting Plan (TPP)

(2) a Proposed Temporary Parenting Plan (PTPP)

(3) an Affidavit of No Visitation for any of the reasons set forth in T.C.A. 36-6-406, along with a notice to the defendant to appear at a date scheduled by the Judge to whom the case is assigned, for a hearing to determine whether any visitation should take place and in what form.

B. The plaintiff shall file a personal report of income. The requirements of the attached information sheet are incorporated by reference.

C. If the court finds that the proposed temporary parenting plan appears to be reasonable, it will be adopted as the temporary order of the court and will continue in effect until further order of the Court.

D. If the defendant disagrees with the temporary parenting plan, he or she may request that the parties be scheduled for the earliest preliminary mediation session, which will be followed by mediation as soon as practical afterwards.

E. All parents, regardless of whether they have a temporary parenting plan or not, are required to attend a parent education seminar.

### **6. Modification of Previous Permanent Parenting Plan:**

All petitions to modify previous permanent parenting plans shall follow the same procedure as if a complaint for divorce is being filed, except the existing permanent parenting plan will continue in effect until completion of the mediation process, unless for good cause shown, the court orders otherwise.

### **7. Parent Education Seminar:**

A. In actions for absolute divorce, divorce from bed and board, annulment, or separate maintenance and in post-judgment modification proceedings involving minor children, where the allocation of parenting responsibilities and/or the establishment of schedules are in dispute, both parents shall attend a parent education seminar.

B. The Education Committee consisting of the trial court judges and chancellor of the 3<sup>rd</sup> Judicial District will receive and act upon applications from providers who seek approval to provide parent education seminars. A list of approved providers will be furnished to the clerks to be included in the package.

C. The Education Providers will make all arrangements for time, place and fees for seminars to be conducted in no less than two hour blocks. Seminar schedules for each provider will be provided to the clerk to be made available to parents and attorneys.

D. Education Providers will notify the courts by filing with the appropriate clerk a copy of a certificate of attendance given to parents attending the classes. Certificates shall include the following: Name; Social Security numbers; docket number; name of education provider; date class was attended; and shall be signed by a representative from the seminar facilitator.

E. Fees: The fee or costs of the parenting education seminars shall be borne by the parties. Fees may be reduced or waived for indigent persons. The Educational Provider will be expected to provide an appropriate number of pro bono slots for indigent persons.

#### **8. Permanent Parenting Plan:**

A. The parties may choose mediation, arbitration or a judicial settlement conference, which conference shall be scheduled by the Court or by agreement of the parties with the approval of the Court.

B. If the parties have not reached agreement on a permanent parenting plan, each party shall file and serve a proposed permanent parenting plan on or before forty-five (45) days before the date set for trial. Parties may continue to mediate or negotiate. Failure to comply may result in the court's adoption of a filed plan if the court finds that plan to be in the best interest of the child. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income pursuant to the child support guidelines and a verified statement that the plan is proposed in good faith and is in the best interest of the child. T.C.A. 36-6-404(c)(3).

#### **9. Mediation and Mediators:**

[1] At any time during the divorce proceedings, parents may choose to participate in a method of alternative dispute resolution and select their own mediator or arbitrator. However, if the court is involved, either by the court's own motion or by motion of one or both parties, the court will appoint a mediator pursuant to Supreme Court Rule 31. If the parties are unable to reach an agreement on a permanent parenting plan within one hundred twenty (120) days after the commencement of the action, the parties may submit a scheduling order to the court including a referral to mediation or alternative dispute resolution or request for a waiver for just cause. The court may designate a Rule 31 family mediator by court order. A list of mediators who have met the court's criteria will be provided to the attorneys and parents. The mediators' fees may be taxed as court costs or the court may determine the case is appropriate for pro bono mediation. The mediator is responsible for reporting to the court pursuant to Supreme Court Rule 31.

#### **[2] Mediation Assignment:**

If the court is involved, either by the court's own motion or by motion of one or both parties, a family mediator will be appointed pursuant to Supreme Court Rule 31. A Rule 31 Family

Mediator will be appointed by court order **OR**, a referral to mediation is ordered by the court **OR**, a referral to pro bono mediation is ordered by the court.

[3] Mediation Fees and Agreement to Mediate:

The parents may directly negotiate the fees with the mediator. An agreement to mediate shall be executed at the beginning of mediation by the parents and mediator, **OR**, the Court may, upon motion, determine that the case is appropriate for pro bono mediation and the fees will be waived or reduced. Each mediator must provide proof of three (3) pro bono mediations to the Administrative Office of the Courts for annual reapproval.

[4] Invoicing Procedures:

[a] If the court has ordered that mediator fees are to be taxed as court costs, the invoice must be submitted with the original final report to the clerk's office.

[b] It is the mediator's responsibility to notify the clerk's office that an invoice is included in the final report.

[c] The invoice should include a docket number to ensure correct filing and payment.

[5] Mediator Reports:

When a mediator has been appointed by the court, reports will be filed with the court pursuant to Supreme Court Rule 31. The reports include a 30-day report and final report.

[6] Judicial Settlement Conferences will not be available in cases affected by this rule, except on motion and a showing of exceptional circumstances that would make mediation not appropriate.

**10. Scope of Rule:**

This rule only makes mediation mandatory on the issues of the parenting plan and support. However, the court encourages the parties to use mediation or other alternative dispute resolution methods on all issues.

**11. Uncontested Divorce:**

In an uncontested divorce where the parties file a Marital Dissolution Agreement, the permanent parenting plan shall be separately attached as Exhibit A.

**12. Waiver:**

Upon proper motion or *sua sponte*, the court will waive any requirements of this rule for the reasons set forth in T.C.A. 36-6-409 or for other good cause.

**RULE 28A: AMENDMENT**

Local Rule of Practice 28, Section 5, is hereby amended by adding the following as new subsections (F) and (G):

F. Pursuant to T.C.A. 36-6-403(2), the proposed Temporary Parenting Plan shall be accompanied by a verified statement that the Plan is proposed in good faith and is in the best interest of the child. This verified statement shall specify the name and address of the caregiver for the child, as well as with whom the child has primarily resided during the six month period immediately

preceding the filing of the complaint/petition. If the proposed temporary parenting plan serves to change the parenting schedule existing during the six month period, the verified statement shall so state.

G. The proposed Temporary Parenting Plan must identify the child support obligor and the amount of the child support obligation to be paid *pendente lite*. The proposed Temporary Parenting Plan shall reflect whether the five percent (5%) collection fee is to be paid by the obligor.

### **RULE 29: MEDIATION OF CONTRACTOR, HOMEOWNER, COMMERCIAL DEVELOPER DISPUTES**

Under authority of Tennessee Supreme Court Rule 31, all civil actions between homeowners or commercial developers and contractors, involving new construction or remodeling, and having issues concerning the quality of the work performed and/or the terms of the alleged contract shall first be submitted to mediation before being set for trial.

The costs of the mediation shall be taxed as court costs. The parties may agree on any person to be a mediator. If the parties cannot agree on a mediator, a motion shall be made to the Court to appoint a Rule 31 mediator.

### **RULE 30: RESTRAINING ORDERS IN DOMESTIC RELATIONS CASES**

Upon the filing of a petition for divorce or legal separation and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent or upon the filing of a petition for divorce upon the grounds of irreconcilable differences and the transmission of a copy to the other party even if the complaint is not served or upon the filing of a petition to modify a Permanent Parenting Plan, the following temporary injunctive relief shall be in effect against both parties until the final decree is entered, the petition is dismissed or the parties reach agreement:

#### **MUTUAL RESTRAINING ORDER**

The parties are mutually restrained and enjoined from:

1. Transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any property.

*Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction.*

*Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.*

2. Voluntarily canceling, modifying, terminating, assigning or allowing to lapse for nonpayment of premiums, any insurance policy, including but not limited to life, health, disability, homeowners, renters and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries

without the consent of the other party or an order of the court. "Modifying" includes any change in beneficiary status.

3. Harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party's employer.

4. Removing any children of the parties from the state of Tennessee without the permission of the other or an order of the court. The provisions of Section 36-6-101(a)(3) shall be applicable on fulfillment of the requirements of this Rule.

The Mutual Restraining Order shall be attached to the summons and the complaint and shall be served with the complaint. **The directives shall become an order of the court upon fulfillment of the requirements of this Local Rule.** However, nothing in this rule shall preclude either party from applying to the court for further temporary orders, an expanded temporary restraining Order or modification or revocation of this temporary injunction.

The Restraining Order shall also contain the following language:

**VIOLATION OF A RESTRAINING ORDER MAY RESULT IN A FINE UP TO \$50.00 AND/OR UP TO TEN DAYS IN JAIL FOR EACH VIOLATION.**

The Restraining Order shall bear the signatures of the Plaintiff, Plaintiff's counsel and the Judge/Chancellor. See also Local Rule 30.02, *infra*.

### **Section 30.01 Responsibility of Petitioner or Petitioner's Attorney**

It shall be the responsibility of the petitioner or the petitioner's attorney, not the Clerk, to cause the provisions of the above temporary injunction to be attached to the summons and the complaint.

### **Section 30.02 Violation of Mutual Restraining Order**

Service of an unsigned above temporary injunction may not result in incarceration of the violator, in the discretion of the Court.

## **RULE 31: INSTRUCTING CLERK TO INVEST FUNDS**

The Clerk shall invest funds in interest bearing accounts only when there is a specific Order directing the Clerk to do so. Such orders should suggest the period of time the funds should be invested, as well as state the name of the financial institution in which the funds are to be invested and the specific type of account to be utilized.

All such orders shall contain the full legal name, address and Social Security number or Employer Identification number of the person/entity whose funds are being invested. If the funds are those of a minor, the Order shall recite the minor's date of birth.

If no instructions are provided within such orders, or if instructions are deficient as to any aspect of investment, said funds shall be invested at the sole discretion of the Clerk.

In addition to the entry of the above described Order, it shall be the DUTY OF THE ATTORNEY or *pro se* party seeking investment of funds to **specifically and personally notify the Clerk & Master, verbally AND in writing,** that the funds are to be invested in a specific interest bearing account.

### **RULE 32: FEES FOR DELINQUENT TAX ATTORNEYS**

Those attorneys prosecuting delinquent tax suits in the Chancery Courts for the Third Judicial District shall be paid an additional fifty dollars (\$50.00) per delinquent tax parcel per tax year, per governmental entity, not to exceed one hundred dollars (\$100.00) per parcel, as a reasonable supplemental fee for his/her services, in addition to that fee provided in T.C.A. 67-5-2410, which sum shall be collected by the Clerk.

### **RULE 33: CONTEMPT FILINGS/PROCEEDINGS**

In any case in which contempt of court is at issue and incarceration is being sought, words indicating same in unambiguous terms shall be typewritten, or printed, in capital letters on the first page of the lead pleading opposite the style of the case and above the space for the case number, i.e. **“INCARCERATION REQUESTED”**. See Tenn. Sup. Ct. R. 13 requiring notification of the right to appointed counsel.

In the event the defendant/respondent files an affidavit of indigency and requests the appointment of an attorney and should the Court determine that the defendant/respondent is indeed indigent, and incarceration is being sought, the Clerk is hereby authorized and directed to contact an attorney who can accept the appointment to represent that defendant/respondent for that proceeding. No attorney shall be exempt from such appointment, unless the attorney has a conflict of interest. Such appointment shall be made upon a rotational basis, when possible, among the members of the local bar.

### **RULE 34: DISTRIBUTION OF FUNDS BY THE COURT**

At the discretion of the Clerk, any person receiving funds from the Court shall provide, upon receipt of same, an IRS form W-9 (“Request for Taxpayer Identification Number and Certification”) to the Clerk.

### **RULE 35: FOREIGN LANGUAGE INTERPRETERS**

(A) The courts of the Third Judicial District recognize that language can be a barrier to understanding and exercising one’s legal rights, and to securing meaningful access to the judicial system. Therefore, this rule sets out the procedure for implementing Tennessee Supreme Court Rule 42 regarding the provision of interpreters for persons with limited English proficiency (“LEP”).

(B) Recognizing that appointment of a court interpreter is discretionary with the court, if the court finds a foreign language interpreter is necessary in a particular case, within 5 days of the

order requiring an interpreter be appointed, the Clerk and Master shall review the Roster of Certified and Registered Spoken Foreign Language Court Interpreters in Tennessee found on the AOC website at:

<http://www.tsc.state.tn.us/geninfo/programs/Interpreters/rosterindex.htm>.

If there is not an interpreter listed for the needed language on the Roster of Certified and Registered Spoken Foreign Language Court Interpreters, contact the Administrative Office of the Courts for assistance.

- (a) The Clerk and Master shall obtain an interpreter according to the preference listed below:
1. State certified court interpreter;
  2. State registered court interpreter;
  3. Non-credentialed court interpreter.

- (b) Once the interpreter has been obtained, the Clerk and Master shall advise the court of the same and a specific order of appointment shall be entered. Generally, the costs of interpreter services in both civil and criminal cases shall be taxed as court costs pursuant to Tenn. R. Crim. P. 28 and Tenn. R. Civ. P. 54. However, in cases involving indigent defendants who are entitled to counsel pursuant to Tennessee Supreme Court Rule 13, the cost of interpreter services may be assessed as set out in Section 4(d) of Tennessee Supreme Court Rule 13. Invoices and other appropriate forms for said cases may be found at

<http://www.tsc.state.tn.us/geninfo/programs/Interpreters/Interpreters.htm>.

See Local Rule 9, *supra*.

### **RULE 36: NAME CHANGE**

(A) **Adult:** The verified petition must comply with the statute and shall state the full legal name of the Petitioner, all prior names by which the Petitioner has been known, the place of residence of the petitioner(s), the birth date, age, social security number of the individual whose name is to be changed, and the State where the original birth certificate was issued. Copies of the original birth certificate, social security card and official photo identification shall be submitted with the petition. The individual whose name is to be changed must appear in Court at the hearing, unless otherwise ordered by the Court.

(B) **Minor:** The verified petition to change the name of a minor must comply with the statute and be sworn to and signed by both parents and include copies of the original birth certificates of the child and both parents, social security card and official photo identification of both parents, photograph of the minor and social security card of the minor, if any. Both parents and the minor must appear in Court. If both parents do not join in the Petition or if the identity or location of a parent is unknown, the petition must be specific as to all pertinent facts including all efforts to identify or locate the parent who did not join in the Petition. If the father is not identified on the birth certificate, legitimation proceedings must be completed prior to filing of a petition to change the name of the minor child. Service of process is required for any parent or guardian who does not join in the petition. The verified petition must establish by clear and



convincing evidence that the proposed name change is in the best interest of the minor, otherwise the petition shall not be granted.

### **RULE 37: COURTROOM SECURITY**

In order to ensure and maintain proper security for the protection of government property and safety of the court, court personnel, attorneys and all persons in attendance thereupon, whether as a defendant, witness, or spectator, the Sheriff is authorized and directed to employ all lawful and constitutional means necessary to ensure the security of the courtrooms and all passages, corridors, rooms, and points of ingress and egress thereto. The Sheriff may, circumstances requiring in his/her discretion, establish and promulgate reasonable regulations not inconsistent with this rule for purposes of carrying out its directive including, but not limited to, the search of all persons seeking to enter the various courtrooms of the courthouse where Chancery Court is held. Anyone seeking to enter said courtroom, not consenting to a search of their person when requested by one lawfully authorized to conduct said search, will not be admitted. Only personnel, serving the court, shall wear/carry sidearms in the courtroom while court is in session. In the discretion of the Chancellor, all persons who are legally authorized to carry a firearm because of their status as law enforcement officials may wear/carry said firearms in the courtroom if they are present only as disinterested witnesses. All other persons legally authorized to carry firearms must check their firearms with court personnel while they are in the courtroom, or with the Sheriff.

### **RULE 38: SUBPOENAS FOR MEDICAL RECORDS**

All subpoenas issued by the Clerk and Master for medical records shall reflect compliance with the Health Insurance Portability and Accountability Act (H.I.P.A.A.). See 45 C.F.R. § 164.512(e). The Clerk and Master shall not issue a subpoena pursuant to T.R.C.P. 45.02 for medical records unless the subpoena form includes the following:

#### **HIPAA NOTICE**

A copy of this subpoena has been provided to counsel for the patient or the patient by mail or facsimile on the \_\_\_ day of \_\_\_\_, 20\_\_ so as to allow him/her seven (7) days to:

- (A) serve the recipient of the subpoena by facsimile with a written objection to the subpoena, with a copy of the notice by facsimile to the party that served the subpoena, and
- (B) simultaneously file and serve a motion for a protective order consistent with the requirements of T.R.C.P. 26.03 and 26.07.

If no objection is made within seven (7) days of the above date, you shall process this subpoena and produce the documents by the date and time specified in the subpoena. The signature of counsel or party on the subpoena is certification that the above notice was provided to the patient.

### **RULE 39: MEDIATION**

Unless otherwise ordered, the Court requires the following **contested**, eligible civil actions to be referred to mediation prior to a trial on the merits:

- (1) divorce actions;
- (2) actions involving issues of co-parenting responsibilities and schedules;

- (3) jury trials;
- (4) cases required to be submitted to mediation under Local Rule 29;
- (5) actions involving partition, boundary line disputes and/or matters of rights of way;
- (6) a surviving spouse's claim for elective share, year's support and/or statutory exemptions;
- (7) conservatorships/guardianships.

Upon motion of any party or *sua sponte*, the Court may order any other eligible civil action to be referred to mediation prior to a trial on the merits. The parties may agree on any person to be a mediator. If the parties cannot agree on a mediator, a motion shall be made to the Court to appoint a Rule 31 mediator. Nothing in this rule shall prevent the parties from proceeding with settlement negotiations prior to mediation.