

# LOCAL RULES OF PRACTICE FOR THE COURTS OF RECORD OF MADISON, CHESTER, AND HENDERSON COUNTIES, TENNESSEE TWENTY-SIXTH JUDICIAL DISTRICT

## INTRODUCTORY STATEMENT

By virtue of the authority vested in the Circuit Judges and Chancellor of the courts of record of the Twenty-Sixth Judicial District of Tennessee, and for the purpose of providing uniformity of procedure in the courts in conformity with the Tennessee Rules of Civil and Criminal Procedure, the following rules are hereby adopted and promulgated. The Judge or Chancellor may deviate from these rules to whatever extent he/she deems appropriate in order to meet the ends of justice. These rules replace any rules previously adopted. To the extent any rule herein conflicts with the provisions of the Tennessee Rules of Civil Procedure or Criminal Procedure, the appropriate procedural rule of the Tennessee Rules of Civil Procedure or Criminal Procedure shall govern. These rules shall take effect September 1, 2000.

## **RULE 1. RULES OF COURT: APPLICABILITY, PURPOSE AND DEFINITIONS**

### **¶ 1.01 Applicability**

a. **General Applicability.** Unless otherwise indicated by a particular rule, Rules 1 through 9 apply to all types of cases in the Circuit and Chancery Courts in the Twenty-Sixth Judicial District. When a rule applies only to a particular type of case, (e.g., civil cases or criminal cases), it applies to all cases of that type regardless of which court is hearing the case.

b. **Rules Applicable to Civil Cases Only.** Rules 10 through 30 pertain only to civil cases in Circuit Court unless expressly stated otherwise in these rules.

c. **Rules Applicable to Criminal Cases Only.** Rules 31 through 50 pertain only to criminal cases in Circuit Court unless expressly stated otherwise in these rules.

d. **Rules Applicable to Chancery Cases Only.** Rules 51 through 72 pertain only to Chancery cases unless expressly stated otherwise in these rules.

### **¶ 1.02 Purpose of Rules**

These rules will be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. The Judge or Chancellor will deviate from these local rules only in the exceptional cases when justice so requires.

### **¶ 1.03 Definitions**

The following definitions apply to terms used in these local rules:

\*Clerk: The Circuit Court Clerk or the Clerk & Master of the Chancery Court, as applicable, or their designees.

\*Tenn. R. Civ. P.: Tennessee Rules of Civil Procedure.

\*Tenn. R. Crim. P.: Tennessee Rules of Criminal Procedure

#### **¶ 1.04 Citation**

These rules may be cited as “Local Rule ¶ \_\_\_\_\_.”

### **RULE 2. THE PRESIDING JUDGE**

The Presiding Judge, selected pursuant to T.C.A. ¶ 16-2-509 and Rule 11 of the Rules of the Supreme Court of Tennessee, will supervise the administration of the trial courts.

### **RULE 3. ASSIGNMENT AND DISPOSITION OF CASES**

#### **¶ 3.01 Initial Assignment and Disposition of Cases**

The Judges of the various courts will adopt a method for the initial assignment of cases to a particular division and enter an order to that effect. The Clerk may not assign a case to a particular division other than by using the method ordered unless instructed to do so by the court.

#### **¶ 3.02 All Matters in the Same Division**

Once a case has been assigned, all matters in the case will be heard in that division.

#### **¶ 3.03 Interchange of Judges**

When necessary for the efficient administration of justice, a Judge may hear and determine any matter by interchange for another Judge without the necessity of transferring the case from one court to another or from one division to another.

#### **¶ 3.04 Transfer of Cases**

The Presiding Judge may transfer a case from one court to another or from one division to another. The Judges and Chancellors of the Twenty-Sixth Judicial District may transfer cases among themselves by mutual consent except in cases of recusal. It is not necessary that the parties or their counsel consent to such a transfer.

#### **¶ 3.05 Motions to Transfer**

A party requesting a transfer of a case will obtain a transfer order from the court to which the case is assigned. If a motion to transfer is prompted by a pending related case, absent exceptional circumstances, the transfer must be assigned to the court with the oldest pending related or companion case. The party requesting the transfer must also obtain the signature of the transferee Judge on the transfer order.

#### **¶ 3.06 Consolidation of Cases**

Cases must be assigned or transferred to the same division before they can be consolidated. Counsel should request transfer of the case or cases to the division

having the oldest pending related or companion case. An Order to consolidate the cases must be obtained from the division to which the cases to be consolidated are assigned.

#### **RULE 4. COURT SESSIONS AND COURTROOM PROCEDURE**

- a. Court sessions may be held Monday through Fridays. The court may convene at any time as is necessary for the hearing of causes specially set.
- b. The Judge or Chancellor shall wear a judicial robe at all sessions of the Court. This requirement may be waived by the Judge or Chancellor at any informal hearing.
- c. All persons in the courtroom shall stand at the opening and closing of court.
- d. All papers shall be handed to the Judge or Chancellor by the sheriff. No attorney shall approach the bench or witness stand except when directed by the Judge or Chancellor.
- e. There shall be no smoking in the courtroom, nor shall food or drink be brought into the courtroom
- f. All attorneys and court attendants shall be appropriately dressed during court sessions; male attorneys shall wear coats and ties.
- g. All litigants and witnesses shall wear appropriate attire and make a clean and neat appearance.
- h. Jurors shall wear appropriate attire and make a clean and neat appearance.
- i. Upon the Judge or Chancellor entering the courtroom preparatory to the formal opening of court, the Sheriff shall call the courtroom to order, directing all in attendance to stand, and upon being so instructed by the Court, shall open court in substantially the following manner:

“Hear Ye! Hear Ye! This court is now open - All persons having business with the court draw near, give attention and you shall be heard. Be seated, please.”

Thereupon the Judge or Chancellor and those in the courtroom shall be seated.

- j. Whenever anyone addresses the Court or is addressed by the Court, they shall rise and remain standing. Attorneys are required to stand while interrogating witnesses.
- k. Whenever the Judge or Chancellor is ruling, all persons in the courtroom shall remain seated and, if entering the courtroom, shall be seated until the Judge or Chancellor has finished ruling.
- l. While court is in session no one may photograph any of the proceedings without permission of the Court.
- m. Upon the Judge or Chancellor instructing the Sheriff to adjourn court for the day, the Sheriff shall direct all in attendance to stand and shall adjourn in the following manner:

“This Court is now adjourned.”

n. The Sheriffs of Madison, Henderson, or Chester County are authorized and directed to employ all lawful and constitutional means necessary to insure the security of the courtrooms and all passages, corridors, rooms, and points of ingress and egress thereto. Each Sheriff shall insure and maintain proper security for the protection of government property and the safety of the court, court personnel, attorneys and all persons in attendance thereof, whether as plaintiff, defendant, witness, or spectator. Each Sheriff may, circumstances requiring in his or her discretion, establish and promulgate reasonable regulations not inconsistent with this rule for purposes of carrying out its directives including, but not limited to, the search of all persons seeking to enter the various courtrooms of the Madison, Henderson, and Chester County Courthouses. Anyone seeking to enter said courtrooms not consenting to a search of their person when requested by one lawfully authorized to conduct said search, shall not be admitted therein. Strip body searches are not authorized. Only authorized personnel serving the Court shall wear side-arms in the courtroom while court is in session. In the discretion of the Judge or Chancellor all persons who are legally authorized to carry a firearm because of their status as law enforcement officials may wear said firearms or must check their firearms with the Court Bailiff while they are in the courtroom, or with the nearest office of the Sheriff.

## **RULE 5. ORDER OF BUSINESS**

At the opening of court, orders or decrees may be presented. The court will then take up any uncontested matters. The calendar of the day shall be then called.

## **RULE 6. APPEARANCE AND CONDUCT OF COUNSEL**

### **¶ 6.01 Counsel of Record; Entry of Appearance**

All counsel who have entered an appearance in a case will be counsel of record. Entry of an appearance will be made in one of the following ways:

1. a written request by counsel to the Clerk that an appearance be entered;
2. the filing of pleadings;
3. the filing of a formal notice of appearance;
4. appearance as counsel at an arraignment; or
5. appointment by the Court.

### **¶ 6.02 Non-Tennessee Attorneys**

A lawyer residing in a state with a rule similar to this one, who is licensed, in good standing and admitted to practice before the court in that state shall be permitted to file complaints, petitions, and any other cause in Circuit or Chancery Court only upon certifying in writing on the instrument filed, before or at the filing, that such lawyer has not filed five or more such instruments, nor made five or more appearances in the courts of Tennessee within the past 12 months. In addition, a lawyer licensed to practice and in good standing in the State of Tennessee must be named as associate counsel on the certification and said Tennessee associate counsel must be an active participant in all court proceedings.

### **¶ 6.03 Cases in Which a Local Attorney is a Party**

In any action in which a Madison, Henderson, or Chester County attorney is a real, rather than a nominal party, that fact shall be brought to the attention of the Judge by written notice, a copy of which shall be filed and delivered within thirty (30) days after the first responsive pleading in Circuit or Chancery Court, or the docketing of the case in Circuit or Chancery Court (whichever is sooner), and shall describe the nature of the case, state whether a jury has been demanded, and indicate whether or not the attorney-party intends to testify. The Court will then forthwith decide whether or not to request that a Judge from outside this Circuit be designated to hear the case, and will notify counsel for the parties of the decision. Nothing herein shall prevent counsel for either party from requesting that the court obtain designation of a Judge from outside this Judicial District.

#### **¶ 6.04 Withdrawal of Counsel**

No attorney of record may withdraw in any case except on written motion and court order. All motions for leave to withdraw shall include the reasons requiring withdrawal (unless prohibited by the Code of Professional Responsibility) and the name and address of any substitute counsel. If substitute counsel has not been retained, that fact shall be set forth in the motion and the motion shall also set forth the name, address, and telephone number of the client, as well as the signature of the client approving the withdrawal. If there is no signature of the client indicating agreement with the withdrawal, such withdrawal will only be allowed after a hearing. A certificate of service shall notify the client of the time, date, and place of the hearing. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of the action. If withdrawal is allowed in a case in which substitute counsel has not been retained, the party will be allowed a reasonable amount of time to acquire new counsel.

#### **¶ 6.05 Conduct of Counsel**

- a. At trial, counsel will avoid use of first names and other expressions of familiarity with adult witnesses, jurors, opposing counsel, and all other persons present. During opening statements or closing argument, no juror will be addressed individually by name.
- b. Lawyers should request bench conferences only when necessary.
- c. Objecting counsel will state the legal grounds for an objection without argument or discussion. There shall be no “speaking objections.” Attorneys shall stand when making objections.
- d. Attorneys will stand while examining witnesses or addressing the jury or the court.
- e. No attorneys, parties, or any other person who has an interest in a case set for trial will engage in any kind of conversation with any juror serving in any court of record. Once the juror’s service is complete and the juror is excused from jury service, attorneys may interview jurors consistent with Supreme Court Rule 8, E.C. 7-29, and D.R. 7-108.
- f. The following Standards of Intra-Professional Conduct are hereby adopted as standards which govern the conduct of counsel.

#### **¶ 6.05(a) Standards of Intra-Professional Conduct**

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without notice to adversary counsel sufficient to permit response.
2. A lawyer should promptly respond to attempts by other lawyers to contact him or her, whether by telephone or correspondence.
3. A lawyer should respect his or her opponent's schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.
4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.
5. A lawyer should not engage in intentionally discourteous behaviors for the purpose of obtaining an advantage.
6. A lawyer should never intentionally embarrass another attorney and should avoid personal criticism of him or her in the presence of his or her client or other counsel.
7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, and never for the mere purpose of obtaining a tactical advantage.
8. A lawyer should strive to maintain a courteous tone in correspondence, pleadings, and other written communications.
9. A lawyer should never intentionally mislead or deceive an adversary and should honor promises or commitments made.
10. A lawyer should acknowledge that the conflicts within which he or she is involved are professional and not personal and should endeavor to maintain a friendly and collegial relationship with his or her adversaries. In short, a lawyer should "leave the argument at the courtroom door."

#### **¶ 6.06 Setting Attorney Fees**

Whenever the amount of an attorney's fee is an issue, the attorney will file an affidavit setting forth an itemized statement of the services rendered, the time, a suggestion of the fee to be awarded along with a statement of other pertinent facts including but not limited to that required by D.R. 2-106 of the Code of Professional Responsibility and applicable case law, and such other information as may be requested by the court.

#### **¶ 6.07 Contacting Judge**

Neither counsel nor a party to a pending action will communicate ex parte with the Judge before whom the matter is pending except consistent with the Code of Professional Responsibility, the Code of Judicial Ethics, and Rule 13 of the Rules of the Supreme Court of the State of Tennessee.

### **RULE 7. FILING AND SERVICE OF PAPERS**

#### **¶ 7.01 Filing with the Clerk**

Except as provided in Rule 22, all papers, including pleadings, motions, and proposed judgments and orders, will be filed with or submitted to the Clerk. Papers should not be mailed to or left with the Judge except in the following circumstances: 1) when specifically authorized by the Judge, or 2) to provide a courtesy copy for the Judge's review.

#### **¶ 7.02 Certificate of Service**

All papers must contain a certificate of service showing the date of service and the name of the person or persons served. The Clerk may refuse to file papers without a certificate. The intent of the rule is to eliminate certificates of service that indicate service on "all counsel of record."

#### **¶ 7.03 Signature of Counsel**

All pleadings, orders, briefs and other papers submitted for consideration by the court will be personally signed by at least one attorney of record in her/his individual name and will show the style and number of the case, the general nature of the paper filed, and the name, street address and telephone number of the attorney filing the pleadings, and the filing attorney's Tennessee Supreme Court Registration Number.

### **RULE 8. PAPERS FILED IN TRIAL COURT**

#### **¶ 8.01 Custody of the Files**

The Clerk will have custody of all papers and records of the court. Files may not be withdrawn by any person at any time. The Clerk will furnish copies of the content of files at a reasonable cost.

#### **¶ 8.02 Papers, Documents or Files Under Seal**

All papers, documents and files shall be available for public inspection except as specifically exempted by court order or statute. The motion seeking such an order must contain sufficient facts to overcome the presumption in favor of disclosure.

### **RULE 9. MEDIA GUIDELINES**

#### **¶ 9.01 Media Access**

a. **Coverage Generally.** Media Coverage of public judicial proceedings shall be allowed in accordance with the provisions of this rule. The coverage shall be subject, at all times, to the authority of the presiding Judge to i) control the conduct of the proceedings before the Court; ii) maintain decorum and prevent distractions; iii) guarantee the safety of any party, witness, or juror; and iv) ensure the fair and impartial administration of justice in the pending case.

b. **Requests for Media Coverage.** Requests by representatives of the media for such coverage must be made in writing to the presiding Judge not less than two (2)

business days before the proceeding is scheduled to begin. The presiding Judge may waive the two-day requirement in his or her discretion.

c. **Notification of Request.** Notification that the media has requested such coverage shall be provided by the Clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the Judge at the Clerk's request if the request is made for media coverage on all or part of a docket. If the Judge waives notification, the Clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted only if the person can show that he or she was prejudiced by the lack of notice, and that there is good cause to refuse, limit, terminate or temporarily suspend media coverage pursuant to 9.04(b).

### □ 9.02 Definitions

a. "Coverage" means any recording or broadcasting of a court proceeding by the media using television, radio, photographic, or recording equipment.

b. "Media" means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings.

c. "Proceeding" means any trial, hearing, motion, or other matter held in open court that the public is entitled to attend.

d. "Presiding Judge" means the Judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceeding.

e. "Minor" means any person under eighteen (18) years of age.

### □ 9.03 Prohibitions

a. **Minor Participants.** Media coverage of a witness, party, or victim who is a minor is prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

b. **Jury Selection.** Media coverage of jury selection is prohibited.

c. **Jurors.** Media coverage of jurors during the judicial proceeding is also prohibited.

d. **Closed Proceedings.** Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

e. **Conferences of Counsel.** There shall be no audio pickup, recording, broadcast, or video close-up of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client or between counsel and the presiding Judge held at the bench or in chambers.

### □ 9.04 Limitations

a. **Discretion of Presiding Judge.** The presiding Judge has the discretion to refuse, limit, terminate, or temporarily suspend, media coverage of an entire case or portions thereof, in order to i) control the conduct of the proceedings before the court; ii) maintain decorum and prevent distractions; iii) guarantee the safety of any party, witness, or juror; and iv) ensure the fair administration of justice in the pending cause. Such exercise of the presiding Judge's discretion shall be made following the procedures established in section 9.04(b).

b. **Evidentiary Hearing.** Before denying, limiting, suspending, or terminating media coverage, the presiding Judge shall hold an evidentiary hearing if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. If there is no opposition to media coverage, the presiding Judge may consider matters that are properly the subject of judicial notice. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests in section 9.04(a) is involved, and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest. The presiding Judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

#### □ **9.05 Appellate Review**

Appellate review of a presiding Judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

#### □ **9.06 Equipment and Personnel**

a. **Limitations.** At least one, but no more than two television cameras with one operator each, two still photographers using not more than two cameras each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding.

b. **Pooling Arrangements.** When more than one request for media coverage is made, the media shall select a representative to serve as a liaison and be responsible for arranging "pooling" among the media that may be required by these limitations in equipment and personnel. The identity of the person selected, including name, business address, phone and fax number, shall be filed with the Clerk of the court in which the proceeding is to be held. Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the presiding Judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding Judge shall exclude all contesting media personnel from a proceeding.

c. **Personal Recorders.** Media personnel may use hand-held cassette tape recorders that are no more sensitive than the human ear without complying with section 9.01 of this rule. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast. Usage shall not be obtrusive or distracting, and no change of tape shall be made during court sessions.

d. **Print Media.** This rule does not govern the coverage of a proceeding by a news reporter or other person who is not using a camera or electronic equipment.

#### □ **9.07. Sound and Light Criteria**

a. **Distractions.** Only television, photographic and audio equipment which does not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

b. **Courtroom Light Source.** If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the court facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the presiding Judge, and without public expense.

c. **Audio Pickup.** Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from a television camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the presiding Judge.

d. **Technical Difficulties.** Court proceedings shall not be interrupted by media personnel because of a technical or equipment problem. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

#### **¶ 9.08. Location of Equipment and Conduct of Media Personnel**

a. **Location of Equipment and Personnel.** The presiding Judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

b. **Alterations.** No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the presiding Judge. Expenses for alterations shall be borne by the media.

c. **Movement During Proceedings.** During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment which disrupts or distracts from the proceeding. Media broadcast, photography or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

d. **Conduct of Media Personnel.** Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not distract from the proceeding.

#### **¶ 9.09. Impermissible Use of Media Material**

None of the film, videotape, still photographs, or audio recordings of proceedings under this Rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceeding.

#### **¶ 9.10. Ceremonial Proceedings**

This Rule shall not limit media coverage of investiture, ceremonial, or non-judicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the presiding Judge.

**¶ 9.11. Compliance**

Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the presiding Judge.

## **RULES APPLICABLE TO CIRCUIT CIVIL CASES**

### **RULE 10. TIME STANDARDS FOR DISPOSITION OF CASES**

#### **¶ 10.01 Time Standards**

All civil cases must be concluded or set for trial within twelve (12) months from date of filing unless the court has directed a shorter or longer period.

#### **¶ 10.02 Dismissal of Cases**

To expedite cases, the court may take reasonable measures including dismissal or entering a scheduling order to enforce the time standard set forth above.

#### **¶ 10.03 Docket Calls or Status Conferences**

The court may hold docket calls or status conferences to ascertain the status of cases and set deadlines for their disposition. Attorneys are responsible for obtaining the dates of docket calls from the Clerk or Judge's secretary.

### **RULE 11. FORMS OF PLEADINGS**

a. All pleadings shall contain a caption and designation as provided by Rule 10.01 Tenn. R. Civ. P. In addition, all complaints, petitions and motions shall, in the designation thereof, contain a short statement of the relief sought or the nature of the matter contained therein. The Clerk may refuse to accept a pleading not so styled.

b. All pleadings, addressed to the court, shall be in the following form, to wit: "In the Circuit Court of Tennessee for the Twenty-Sixth Judicial District at \_\_\_\_\_ (Jackson, Lexington, Henderson).

c. All pleadings shall conform to the requirements of Rules 7, 8, 9, 10 and 11, Tenn. R. Civ. P. Any pleading not conforming may, upon motion of an attorney, or by the court sua sponte, be stricken from the docket. Pleadings are requested to be on legal size paper (8 ½" x 14"). However, no pleading shall be refused because of the size of the paper.

d. The Clerk shall note the filing of all pleadings and documents as required by Rule 5.06 Tenn. R. Civ. P.

e. All pleadings and documents bearing the name of a legal firm shall also be signed individually by the member of the firm to whom the case is assigned and shall contain the address, phone number and Supreme Court Disciplinary Number of the attorney filing it.

### **RULE 12. THIRTY (30) DAY EXTENSION TO PLEAD**

Any party may by written stipulation signed by the opposing attorney extend the time for pleading not exceeding thirty (30) days in addition to the period provided by the Tennessee Rules of Civil Procedure. Only one (1) such extension shall be granted. An extension not agreed to by stipulation or an additional extension must be granted by the Judge.

### **RULE 13. GENERAL SESSIONS APPEALS IN CIRCUIT COURT**

a. Any party appealing a judgment of the General Sessions Court to Circuit Court shall have the duty to notify all parties in the General Sessions action of the filing of the appeal, and shall serve a copy of the Appeal Bond with the Notice of Filing of Appeal.

b. Appellant shall have 45 days from the date of filing of the appeal within which to obtain a trial date setting the cause for hearing in the Division to which it is assigned. If the appellant fails to obtain a trial date within this 45 day period, an order may be entered making the judgment of the General Sessions Court that of the Circuit Court, with costs taxed against the appellant. The case does not have to be tried within 45 days of the date of the appeal as long as a date certain for trial is obtained within 45 days of the date of the appeal.

c. At the time the appeal is perfected, the Clerk shall give the appellant or appellant's attorney written notice of this Rule.

d. The signature of an attorney or a party to an appeal from General Sessions Court shall constitute a certification under Tenn. R. Civ. P. 11.

### **RULE 14. DISCOVERY**

a. Answers and other responses or objections to interrogatories, requests for production of documents and requests for admissions shall be numbered sequentially and shall set forth, immediately preceding the answer, the question made in the same numerical sequence.

b. No party shall serve on any other party more than thirty (30) interrogatories or requests for admission without leave of court. For purposes of this Rule a sub-part of an interrogatory shall count as an additional interrogatory. Any motion seeking permission to serve more than thirty (30) interrogatories shall set out the additional interrogatories the party wishes to serve, together with the reasons establishing good cause for the service of additional interrogatories. If a party is served with more than thirty (30) interrogatories, without leave of court, he or she shall respond only to the first thirty (30). This same Rule shall apply for requests for admission.

c. Interrogatories under Rule 33 Tenn. R. Civ. P., Requests for Production under Rule 34 Tenn. R. Civ. P., Requests for Admission under Tenn. R. Civ. P. 36, and the responses to these discovery requests shall be served upon other counsel or parties but shall not be filed with the Clerk except as provided in subsections (1-3).

1. If relief is sought under Tenn. R. Civ. P. 26.03 or Tenn. R. Civ. P. 37 concerning any interrogatories, request for production or requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Clerk contemporaneously with any motion filed under Tenn. R. Civ. P. 26.03 or 37.
2. Any previously unfiled interrogatory, request, answer or response that the Judge considers helpful in resolving a discovery dispute may be ordered filed with the Clerk.
3. To the extent their use can be reasonably anticipated, interrogatories, requests, answers or responses to be used as evidence upon the hearing of

any motion or at trial, shall be filed with the Clerk prior to the hearing of the motion or trial.

Notice of such filing shall be served on all counsel or parties before or at the time of the filing thereof. The timing and manner of service (mail or delivery) shall be calculated to provide reasonable notice thereof to all interested parties.

d. Depositions under Tenn. R. Civ. P. 30 and 31 shall not be filed with the Clerk except as provided by this Rule. The party taking the deposition shall maintain custody of the original deposition during the pendency of the litigation or until the deposition is filed with the Clerk, unless the court otherwise directs. Depositions shall be filed only as follows:

1. When a deposition provides factual support for a motion or a response to a motion, the deposition shall be filed with the Clerk when the motion or response that it supports is filed.
2. When a deposition is to be read or otherwise used at trial or other proceeding, it may be filed any time after its taking, but it shall be filed prior to the conclusion of the trial or other proceeding.
3. When justice so requires, the court may order the filing of a deposition with the Clerk.

Notice of such filing shall be served on all counsel or parties before or at the time of the filing thereof. The timing and manner of service (mail or delivery) shall be calculated to provide reasonable notice thereof to all interested parties.

e. The provisions of Tenn. R. Civ. P. 11 shall apply to all motions and responses concerning discovery pursuant to Tenn. R. Civ. P. 26 through 37.

f. To curtail undue delay, the Court will refuse to rule on any motion to compel, motion for protective order, or motion to quash unless moving counsel shall first file with the Court at the time of filing of the motion a statement certifying that he or she has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised and that counsel have not been able to do so. If counsel for any party advises the Court in writing that an opposing counsel has refused or delayed a discussion of the problems covered in this subsection, the Court may take such action as appropriate to avoid delay, including the granting or denial of the discovery request.

g. Motions to compel discovery shall:

1. either (1) quote verbatim the interrogatory, request, or question and any objection or response thereto, or (2) be accompanied by a copy of the interrogatory, request, or excerpts of a deposition which shows the question and objection or response;
2. state the reason supporting the motion; and
3. be accompanied by a discovery effort certification (See Rule 14(f)).

[When a party has submitted no response to the discovery or has objected to the entire set of interrogatories or requests, the requirements of Local Rule 14(g)(1)(2) shall not apply.]

h. Motions for protective orders which are filed pursuant to Tenn. R. Civ. P. 26.03, motions to quash subpoenas for discovery which are filed pursuant to Tenn. R. Civ. P. 45.02, or any motion asking that discovery be postponed or restricted shall:

1. either (1) quote verbatim the interrogatory, request, question, or subpoena, or (2) be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition which shows the question;
2. state with particularity the grounds for the motion; and
3. be accompanied by an affidavit or other evidence showing the need for the order.

If there is no written request or question pending, counsel shall set forth the anticipated question or area of inquiry and otherwise fully comply with this Rule.

i. Agreements to furnish exhibits made during the taking of depositions may be enforced by motion made pursuant to Tenn. R. Civ. P. 37 and/or Rule 14(g) of these rules.

#### **RULE 15. PROCESS-NOTICE TO OPPOSING COUNSEL-ISSUANCE OF SUBPOENAS**

With the exception of subpoenas for trial, any attorney who issues or causes to issue any subpoena shall give notice thereof on or before the date of issuance to all counsel of record or parties. The Clerk shall keep a copy in the Clerk's file of all subpoenas issued for service by the Sheriff or by any other persons, including attorneys, private process servers, and any person authorized by law to effect service.

#### **RULE 16. APPOINTMENT OF GUARDIAN AD LITEM AND ATTORNEY AD LITEM**

Whenever it is made known to the Court, by pleading or motion that justice requires the representation by a Guardian Ad Litem of a party, or an Attorney Ad Litem, the attorney shall submit an order of appointment leaving blank the name of the person or persons to be appointed.

#### **RULE 17. TEMPORARY INJUNCTION/HEARINGS AND MOTIONS TO MODIFY OR DISSOLVE INJUNCTIONS**

a. Hearings for temporary injunctions shall be on sworn pleadings, affidavits, counter-affidavits, depositions and/or testimony, which shall be limited to the sole

questions of whether or not the temporary injunction is justified, and to dispute material issues of fact.

b. Motions to modify or dissolve injunctions may be heard upon one (1) day's notice or less, if so ordered by the Judge.

## **RULE 18. PRE-TRIAL PROCEDURE IN CIVIL CASES**

### **¶ 18.01 Required Exchange of Witnesses and Documents**

At least ten days before the trial of a civil case, opposing counsel shall either meet fact-to-face or shall hold a telephone conference for the following purposes:

a. to make available for viewing and to discuss proposed exhibits; and

b. exchange a list of witnesses and exhibits.

In the event that the parties hold a telephone conference rather than a face-to-face meeting, the exhibits shall be made available for viewing before the conference.

### **¶ 18.02 Notice of Intent to Use Audio/Visual Recording is Required**

When a party intends to offer an audio and/or visual recording as evidence in a jury trial, counsel must provide written notice to all adverse counsel at least ten (10) days before a trial. Adverse counsel shall be permitted to review the recording in the form to be offered at trial and shall be allowed to copy the recording at his or her own expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion in limine shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing.

### **¶ 18.03 Briefs in Civil Jury Cases**

In all jury cases, unless otherwise allowed by the Court, ten (10) days before the trial of a case, trial briefs shall be submitted to the Court and furnished to opposing counsel. The trial brief format is attached to this Rule as Appendix A. If an issue to be litigated at trial has been briefed in pre-trial motions and counsel believes that the motion brief adequately covered the issue, counsel may refer the court to the motion brief in lieu of briefing the issue for trial.

### **¶ 18.04 Briefs in Civil Non-Jury Cases**

In all non-jury cases, except divorces and General Sessions Court appeals, trial briefs are required. Unless otherwise allowed by the Court, ten (10) days before the trial of a case, trial briefs shall be submitted to the court and furnished to opposing counsel. The trial brief format is attached to this rule as Appendix B. If an issue to be litigated at trial has been briefed in pre-trial motions and counsel believes that the motion brief adequately covered the issue, counsel may refer the court to the motion brief in lieu of briefing the issue for trial.

**TRIAL BRIEF FORMAT – JURY**

- A. A concise statement of the facts
- B. The factual issues to be decided
- C. Points of Law
  - 1. Address all areas felt appropriate including those of an evidentiary nature, if felt controversial.
- D. An argument is neither required nor desired, but may be included, if felt necessary by counsel.
- E. Jury instructions
  - 1. General (Reference shall be made to T.P.I. by numbers (current edition))
  - 2. Include all special requests to charge
- F. General
  - 1. Briefs will not be filed with the Clerk, but sent directly to the trial Judge at his or her address.
  - 2. Include photostatic copies of any out-of-state or unreported cases cited and all statutes relied upon.
  - 3. Counsel will attach copies of their respective pleadings leading to a joining of issue, i.e. complaint and answer – amended, supplemental, etc.

**TRIAL BRIEF FORMAT  
NON-JURY**

- A. A concise statement of the facts
- B. The factual issues to be decided
- C. Points of Law
  - 1. Address all areas felt appropriate including those of an evidentiary nature, if felt controversial.
- D. An argument is neither required nor desired, but may be included, if felt necessary by counsel.
- E. General
  - 1. Briefs will not be filed with the Clerk, but sent directly to the trial Judge at his or her address.
  - 2. Include photostatic copies of any out-of-state or unreported cases cited and all statutes relied upon.
  - 3. Counsel will attach copies of their respective pleadings leading to a joining of issue, i.e. complaint and answer – amended, supplemental, etc.

**RULE 19. CIVIL MOTIONS**

**□ 19.01 Hearings**

All motions shall be in writing and shall state with particularity the grounds for the motion and the relief sought. Opposing counsel shall then have fifteen (15) days to file a response to said motion unless otherwise set forth in the Tennessee Rules of Civil Procedure. The attorney who files the motion has the burden to make application for a hearing at the next available motion day or as soon thereafter as practicable. Failure to comply with this Rule shall be construed by the Court as abandonment of the motion. When a motion is set for a hearing, the Judge who will hear the motion shall be provided by the attorney who filed the motion with a courtesy copy of the motion and all supporting materials. The Judge shall also be provided by the attorney responding to the motion with a copy of the response along with all supporting materials.

a. **Dispositive Motions.** All motions potentially dispositive of any issue in a case shall be scheduled for hearing by the attorney filing the motion at the next available motion day after the filing or as soon thereafter as is practicable. Failure to obtain a hearing in a timely manner may be construed by the Court as an abandonment of the motion and the Court may refuse to consider the motion.

b. **Summary Judgment.** Motions for Summary Judgment shall be filed and served at least sixty (60) days before the scheduled trial date. Any Motion for Summary Judgment filed within sixty (60) days of the scheduled trial date will not be heard and the matter will proceed to trial.

All motions for summary judgment and to dismiss supported by evidentiary matters shall be filed at least thirty (30) days before hearing of same as required by Rule 56.04 of the Tenn. R. Civ. P. Attorneys for the proponent of the motion shall deliver memorandum briefs to the Court (with a copy of affidavits and supporting documents), and shall file with the Clerk all original affidavits and supporting documents at least thirty (30) days prior to the hearing of the motion. Attorneys for the respondent shall deliver memorandum briefs to the Court, (with a copy of affidavits and supporting documents), and shall file with the Clerk all original affidavits and supporting documents not later than five (5) days before the hearing as required by Rule 56.04 of the Tenn. R. Civ. P. No motions shall be heard unless the parties comply with this Rule.

c. **In Limine.** Motions in Limine shall be filed no less than seven (7) business days before trial and set for hearing before the trial. The Court shall be notified of any objections in medical depositions to be read or shown to the jury and the objections shall be heard before the trial.

d. **Special Settings.** Special settings for motions that cannot be heard on a regularly scheduled motion day may be arranged with the appropriate Judge.

#### **¶ 19.02 Opposition to Motions**

If a motion is opposed, a response to the motion must be filed. The response shall be in writing and shall state with particularity the grounds for the opposition. If no opposition to the motion is filed, the motion will be considered unopposed. Responses to motions, including any opposing affidavits, depositions or briefs or any other matter being presented in opposition to the motion must be filed and furnished to opposing counsel at least five (5) days in advance of the hearing. In the Court's discretion, the part of this Rule requiring a Response five (5) days in advance of the hearing (trial) may be modified with respect to a Motion in Limine that is filed on or near seven (7) business days before trial. The intent of this Rule is to allow counsel adequate time to

respond to a Motion in Limine but counsel are encouraged to respond to a Motion in Limine and schedule a hearing as soon as practicable.

**¶ 19.03 Recusal of Judge**

Motions for Recusal of the Judge shall be made so as to not delay a trial.

**¶ 19.04 Orders From Motion Hearings**

The prevailing party or designated attorney shall, in compliance to Local Rule 22, prepare and submit an order reflecting the decision in every motion hearing.

**RULE 20. SETTING CASES FOR TRIAL**

**¶ 20.01 Method of Setting**

When a case is ready for trial the attorney for either party may obtain a trial date in one of the following ways:

- (1) By agreement of counsel after consultation with the court in person or by telephone conference;
- (2) By motion conforming to Tenn. R. Civ. P. 6.04, 6.05 and 7.02;
- (3) By the court with notice to counsel; or
- (4) By the court during a civil docket call. Attorneys are responsible for obtaining the dates of the docket calls from the Clerk or Judge's secretary.

When a case is set by agreement at docket call or otherwise, or when a case is set by motion without objection, all counsel are certifying that they are available for trial and that the case will be ready for trial on the trial date. Counsel shall not apply for or obtain any trial setting from the court without prior notice to all counsel or parties of the time and place of application.

**¶ 20.02 Workers' Compensation Benefit Review Conference**

All workers' compensation cases shall be referred for a benefit review conference. See T.C.A. ¶ 50-6-237 and 239(a). No workers' compensation case shall be tried unless the parties certify to the Court that the benefit review conference process has been completed or is not required pursuant to T.C.A. ¶ 50-6-239(c).

**¶ 20.03 Deadline for Trial Preparation**

The court may issue a scheduling order which will establish deadlines for completing trial preparation and set a trial date.

**RULE 21. DEFAULT JUDGMENT/AFFIDAVITS**

When a party against whom a judgment or affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default may be entered as follows:

The party entitled to a judgment by default shall apply to the court. All parties against whom a judgment is sought shall be served with a written notice of the

application for judgment at least five (5) days before the hearing on the application, regardless of whether the party has made an appearance in the action as provided for in Rule 55.01 Tenn. R. Civ. P.

## **RULE 22. ORDERS AND JUDGMENTS**

a. Orders and judgments shall be headed by a title indicating the nature thereof. Unless otherwise permitted by the court, orders shall be presented to the court within fourteen (14) days after the decision is rendered.

b. It shall be the duty of attorneys for successful parties, unless the Court directs otherwise, to prepare orders for entry by the Court, the same to be submitted to opposing counsel. When opposing counsel receives a copy of an order by mail, he or she shall approve the order immediately if he or she has no objection to the form or substance of the order.

c. If opposing counsel refuses or declines to approve any order and an agreed order cannot be obtained, either party may submit an order to the Court after service of a copy upon the opposing party.

d. Orders mailed to counsel and presented to the Court and containing only the signature of the attorney preparing the order may not be entered immediately, but will be held by the Judge for ten (10) days. If the court receives no objection within the ten (10) day period, the order may be entered. When counsel disagree as to the terms of the order, an order shall be prepared by counsel opposing the order. Counsel shall deliver the same to the Judge before the expiration of the ten (10) day period. The time for these actions shall be computed under Tenn. R. Civ. P. 6.

## **RULE 23. JURY TRIALS**

Whenever a complaint or other pleading in which a jury is demanded is presented for filing, the attorney shall endorse on the face thereof the words, "Jury Demanded". The words "Jury Demanded" should be placed under the docket number. If a jury is thereafter demanded by any party in the action, the Judge to whom the case is assigned shall be notified immediately by that party.

## **RULE 24. MOTIONS FOR NEW TRIAL**

a. Motions for new trial shall be filed and disposed of as provided by Rule 59 Tenn. R. Civ. P.

b. Motions for new trial shall be in writing and filed with the Clerk within thirty (30) days after rendition of a jury verdict or the entry of any decree or judgment to which exception is taken. Such motions shall be presented to the Court and disposed of within thirty (30) days of the date of filing. Additional time may be granted by order of the Court.

c. All motions for new trial shall conform to the following requirements:

1. If a new trial is sought on the ground of error in the charge of the Court, the particular language of the charge of which the complaint is made shall be quoted. No general reference to the charge as erroneous as a whole shall be regarded as sufficient, but the particular part or parts of the charge

complained of must be pointed out and quoted in the written motion for new trial, followed by a statement explaining why it is contended that same is erroneous.

2. It shall not be sufficient to state in general terms that the court erred in the rejection or admission of evidence, but the party seeking a new trial shall, in the motion for new trial, point out the testimony which it is contended was erroneously admitted or excluded, either quoting same literally, giving the substance of it, or otherwise referring to it in such a manner that the exact part of the evidence so admitted or excluded can be identified specifically at the hearing of the motion for new trial.

d. This Rule 24 shall be copied into every transcript of every case hereafter appealed from this Court in which a new trial is sought because of error claimed in the charge of the Court or in the admission or exclusion of evidence.

### **RULE 25. DISMISSAL FOR LACK OF PROSECUTION**

Whenever a cause has remained on the docket for twelve (12) months or more without steps being taken by the plaintiff to dispose of the cause, the opposing parties shall be entitled, upon motion with service to all parties, to request the court for a dismissal of the cause with prejudice at plaintiff's costs.

### **RULE 26. INVESTING FUNDS PER COURT ORDER**

The Clerk's office shall invest litigant's funds paid into court only if there is a court order directing them to do so. The order should state the name of the financial institution in which the funds are to be invested and the specific type of account to be utilized. At the time of payment or when the order is entered, if later, it shall be the **DUTY OF THE ATTORNEY** seeking investment of funds to specifically notify the Clerk receiving payment that the funds are to be invested and to provide an IRS form W-9 to the Clerk's bookkeeping department for the party responsible for tax liability. Funds shall not be withdrawn without an Order of the Court.

### **RULE 27. CONTINUANCES**

a. Cases may be continued by agreement and approval of the court. Application for a continuance of any case set for trial must be made five (5) full days in advance of the day the case is set for trial and must be supported by an affidavit filed with the Clerk of the court giving grounds for seeking a continuance. Unless required by exigent circumstances, counsel shall not apply for a continuance except upon motion. Notice to all counsel and any pro se litigants shall be given as required by Tenn. R. Civ. P. 6.04, 6.05, or in such manner as to provide reasonable notice and an opportunity to be heard to all parties.

b. Normally, the absence of a witness will be grounds for a continuance where the subpoena for a local witness was issued five (5) days or more before the date of trial, or seven (7) days or more before the date of trial where the witness is out of the

county; however, each application for a continuance is subject to the discretion of the court.

c. When application for a continuance is based upon the illness of a party or a material witness, said application must be accompanied by a written statement of a physician specifying the type of illness, whether or not the illness is of a temporary or permanent nature, and whether or not such person is able to appear in court.

d. When application is based upon the fact that a material witness cannot be found, an affidavit must be filed giving the name of said witness or witnesses, what evidence is expected to be proved by said witness or witnesses, and what effort has been made to locate said witness or witnesses.

e. If a case is continued or settled, the attorney who had subpoenas issued for witnesses is responsible for notifying said witnesses not to appear. Failure to do so could result in costs being assessed against that party.

f. If a case is continued, a new trial date may be ordered by the court for a date certain at the time the motion for continuance is granted.

## **RULE 28. SUBPOENAS**

### **¶ 28.01 Subpoenas Issued By Clerk**

In civil actions, subpoenas shall be issued and signed by the Clerk in triplicate. The attorneys shall prepare and submit an original and two copies of each subpoena for issuance by the Clerk.

### **¶ 28.02 Time for Issuing Subpoenas**

Subpoenas for a local witness must be issued and dated by the Clerk no later than five (5) days before the date of trial unless prior approval has been granted by the Judge for an extension. If the witness is to be served out of the county, the subpoena must be issued by the Clerk no later than seven (7) days before the date on which the case is set for trial and promptly mailed or otherwise transmitted to the out of the county Sheriff or other authorized person to effect service of the subpoena. The foregoing notwithstanding, the Clerk shall not refuse to issue a subpoena even if requested after the dates set forth above. Attorneys shall obtain "blank subpoenas" for a specific case only and shall use or return them no later than five days before the trial date. An attorney who causes a subpoena to be served shall return the served original no less than five (5) days before trial.

### **¶ 28.03 Address of Witness**

Counsel of record shall be responsible for providing street addresses and phone numbers, if known on the requested subpoena(s).

### **¶ 28.04 Prison Inmates**

The attendance of prison inmates who are witnesses or parties in civil cases remains governed by T.C.A. ¶ 41-21-304.

## **RULE 29. CIVIL JURIES**

Civil attorneys should notify the trial court if a settlement is reached prior to the date of a jury trial or if a jury is not needed for any reason. If a jury is called in, and a case is not tried to a jury on that date, the Court may assess the cost of the jury to the parties.

### **RULE 30. ALTERNATIVE DISPUTE RESOLUTION**

Upon agreement of the parties or upon order of the court any matter may be referred to a Mediator for a potential resolution of the issues in that cause. The costs of any alternative dispute resolution proceeding, including the costs of the services of the Rule 31 dispute resolution Mediator may be charged as court costs at the Mediator's request. The Court may in its sound discretion waive or reduce costs of an alternative dispute proceeding.

## **RULES APPLICABLE TO CRIMINAL CASES**

### **RULE 31. EXTRAORDINARY INTERLOCUTORY RELIEF IN CRIMINAL CASES**

All special requests for extraordinary interlocutory relief in unindicted and unassigned cases including but not limited to the amount of a defendant's bond shall be presented to the Judge who is assigned the Grand Jury for that particular term. Under the current court calendar, Division I is assigned the Grand Jury in January, February, March, and April; Division II is assigned the Grand Jury in May, June, July, and August; and Division III is assigned the Grand Jury in September, October, November, and December. This rule applies to all three (3) counties in the Twenty-Sixth Judicial District. Another Judge will consider the request if and only if the situation is an emergency and the assigned Judge is unavailable.

### **RULE 32. DISCOVERY IN CRIMINAL CASES**

When a party intends to offer an audio and/or visual recording as evidence in a jury trial and the law requires its disclosure to adverse counsel, adverse counsel shall be permitted to review the recording in the form to be offered a trial and shall be allowed to copy the recording at his or her expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion in limine shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing. This does not void requirements of Tenn. R. Crim. P. 12(d).

### **RULE 33. SUBPOENAS**

#### **¶ 33.01 Subpoenas Issued by Clerk**

In criminal cases the issuance of subpoenas for witnesses shall comply with Criminal Court Clerk policies.

#### **¶ 33.02 Time for Issuing Subpoenas**

Subpoenas for a local witness must be issued and dated by the Clerk no later than five (5) days before the date of trial unless prior approval has been granted by the Judge for an extension. If the witness is to be served out of the county, the subpoena must be issued by the Clerk no later than seven (7) days before the date on which the case is set for trial and promptly mailed or otherwise transmitted to the out of the county Sheriff or other authorized person to effect service of the subpoena. The foregoing notwithstanding, the Clerk shall not refuse to issue a subpoena even if requested after the dates set forth above. Attorneys shall obtain "blank subpoenas" for a specific case only and shall use or return them no later than five days before the trial date. An attorney who causes a subpoena to be served shall return the served original no less than five (5) days before trial.

#### **¶ 33.03 Address of Witness**

Counsel of record shall be responsible for providing street addresses and phone numbers, if known, on the requested subpoena(s).

#### **¶ 33.04 Prison Inmates**

The following rules apply to the appearance of prison inmates in court:

a. When the prison inmate is a defendant in a criminal case, the District Attorney General shall prepare a proposed transport order and submit it to the Court at least seven (7) working days prior to the court date.

b. Counsel needing prison inmates as witnesses in a criminal case shall submit a proposed transport order at least seven (7) working days prior to the trial or hearing date.

c. Defense counsel in criminal cases shall make every effort to insure that prison inmates are not needlessly brought to court for a scheduled settlement docket (see Local Rule 40) unless the case is for actual settlement and/or there is other just cause.

d. Deadlines on transport orders may be waived by the Court for just cause if it is practicable for the Sheriff's Department to transport the inmate on short notice.

#### **¶ 33.05 Notice of Additional Witnesses**

Notice of additional witnesses shall be filed as far in advance of trial as practicable. When a notice of additional witnesses is filed less than sixty days before the beginning of a trial term, the attorney filing the notice shall check the Clerk's file to determine if subpoenas for that case have already been issued. If subpoenas have already been issued for the case, the attorney filing the notice shall notify the Clerk that additional subpoenas should be issued for the case.

### **RULE 34. MOTIONS IN CRIMINAL CASES**

#### **¶ 34.01 Time for Filing Pre-Trial Motions**

All pre-trial motions shall be made pursuant to Tenn. R. Crim. P. as well as the pretrial scheduling order.

#### **¶ 34.02 Failure to Appear at a Motion Hearing**

If counsel for a movant does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike, deny, or otherwise dispose of that motion.

#### **¶ 34.03 Motions in Limine**

a. Motions in limine seeking to resolve a trial evidentiary matter shall be set at the discretion of the court.

b. Counsel are encouraged to raise appropriate evidentiary objections by written motion at least five (5) days before trial.

#### **¶ 34.04 Statement of Facts and Legal Authority**

Every motion and response which may require the resolution of an issue of law or evidence shall be accompanied by a brief statement of facts and legal authority in support of the position of the motion or response.

## **RULE 35. DIVERSION REQUESTS**

a. The defendant's first appearance day is the deadline for initiating a request for Pre-Trial Diversion. Failure of counsel to comply with this rule may result in the denial of Pre-Trial Diversion.

The attorney requesting Pre-Trial Diversion shall obtain an order for the investigation and preparation of the report by the probation authorities and shall provide a copy of the order to the proper probation authorities. The attorney requesting Pre-Trial Diversion shall also request a TBI eligibility check for the defendant.

After counsel for Defendant has received both the pre-trial investigation report and the TBI approval form, counsel for defendant shall have up to fifteen (15) days to respond by submitting to the District Attorney the "Attorney's Certificate" form attached to these rules. The parties may agree to a longer response time, not exceeding thirty (30) days. If the form is not timely submitted or additional time requested, then the matter will be deemed ripe for decision. The "Attorney's Certificate" is attached to this rule as Appendix C.

b. When a tentative agreement for Post-Plea Expungement is reached or when Judicial Diversion is requested, Counsel for defendant will promptly request a TBI eligibility check.

c. The Court will not accept a plea based on Judicial Diversion or Post-Plea expungement until TBI approval has been obtained.

**ATTORNEY'S CERTIFICATE  
PRE-TRIAL DIVERSION**

To: The District Attorney General

In Re: \_\_\_\_\_  
Defendant's Name

Case #: \_\_\_\_\_

I hereby certify that I have received and reviewed the TBI eligibility check and the pre-trial investigation report. My response is as follows:

\_\_\_\_\_ No additional comments

OR

\_\_\_\_\_ I have comments attached, which I wish you to consider and/or additional documentation attached for your consideration.

Copies of the pre-trial investigation report and TBI eligibility form are attached.

This matter is now ripe for your decision on pre-trial diversion.

\_\_\_\_\_  
Defense Attorney

Dated: \_\_\_\_\_

## **RULE 36. SETTING OF MOTIONS**

Pre-trial motions will, if practical, be set on motion days designated by the Court, and may be set on seven (7) days written notice to the Judge's secretary and the opposing party, or may be set by agreement. The Court may allow the opposing party a reasonable continuance for good cause shown.

## **RULE 37. SETTING CASES FOR TRIAL AND CONTINUANCES: CRIMINAL CASES**

### **¶ 37.01 Method of Setting**

Cases shall be set for trial by the court on the final settlement date.

### **¶ 37.02 Continuances**

a. Cases may not be continued by agreement and may be continued only by leave of court. When a case has been set for trial it will 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 the trial.

b. Absence of a witness will not be a ground for continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and Rule 17, Tenn. R. Crim. P.

c. If a case is continued, a new trial date will be assigned at the time of the continuance.

## **RULE 38. CLOTHES FOR INCARCERATED DEFENDANTS**

Counsel for jailed defendants should make a diligent effort to have clothes provided to his or her client by 7:00 a.m. on the day of trial. The purpose of this Rule is to avoid a delay on the day of trial while street clothes are obtained for an incarcerated defendant.

## **RULE 39. WAIVER OF ARRAIGNMENT**

Waiver of Arraignment shall be in writing setting forth the defendant's next report date and signed by the defendant. Waivers shall be filed no later than the morning of arraignment day, with service to the office of the district attorney and the Judge presiding over arraignment. Counsel of record must appear at arraignment pursuant to Tenn. R. Crim. P. Rule 43 (c)(4).

## **RULE 40. NEGOTIATIONS AND SETTLEMENTS IN CRIMINAL CASES**

### **¶ 40.01 Appearance Day**

Appearance days will generally be set approximately five weeks after arraignment. A calendar will be published by the Judges to reflect the settings. When Court schedules are full, priority will be given to those defendants who are incarcerated. On appearance days, pleas should be entered on cases that are to be settled. The

Court may continue the case to another appearance day if additional time is needed by the parties to achieve a settlement of the case.

#### **¶ 40.02 Settlement Date; Settlement Deadline**

The settlement (appearance) date will be the deadline for acceptance of a negotiated disposition. At the final settlement (appearance) date, if the case has not been settled the court will set the case for trial. Once a case has been set for trial, the court will not accept any settlement except for good cause which shall be brought to the attention of the court as soon as practicable. If a jury reports on the day of trial and the case is not tried, the Court may assess the cost of the jury as part of the court costs. Nothing in this rule shall prohibit the defendant's election to enter a plea of guilty to one or more counts of an indictment while demanding a trial on one or more counts of the same indictment. Likewise, counsel for the State may move to dismiss with prejudice one or more counts of the indictment while demanding trial on one or more counts.

#### **¶ 40.03 Notice to Victims**

In recognition of T.C.A. ¶ 40-38-101, in cases involving plea agreements pursuant to Tenn. R. Crim. P. 11, the court may refuse to accept the plea unless the prosecuting attorney states on the record that he or she has, before the plea, communicated with the victim regarding the plea or made a good faith effort to communicate with the victim. This Rule shall apply to pleas in cases where the defendant is indicted for the following offenses:

- a. murder or the attempt, facilitation or solicitation to commit murder;
- b. voluntary manslaughter, reckless homicide, criminally negligent homicide or the attempt, facilitation or solicitation to commit these crimes;
- c. vehicular homicide;
- d. aggravated assault;
- e. aggravated kidnapping, kidnapping or the attempt, facilitation or solicitation to commit these crimes;
- f. all felonies described as Sexual Offenses under T.C.A. ¶ 39-13-501, et seq. or the attempt, facilitation or solicitation to commit these crimes;
- g. aggravated arson and arson or the attempt, facilitation or solicitation to commit these crimes;
- h. robbery, aggravated robbery and theft of property from the person;
- i. especially aggravated burglary or aggravated burglary or the attempt, facilitation or solicitation to commit these crimes;
- j. all felonies described as Offenses Against the Family under T.C.A. ¶ 39-15-101, et seq., or the attempt, facilitation or solicitation to commit these crimes;
- k. vandalism;
- l. stalking; and
- m. all other crimes involving individual victims where the Judge deems it appropriate that prior communication is made to the victim.

### **RULE 41. APPOINTMENT OF ATTORNEY FOR INDIGENT DEFENDANT**

If the Court determines that a defendant is indigent, the Court will appoint an attorney to represent that defendant at arraignment or as soon thereafter as possible, and an order will be entered appointing that attorney

#### **RULE 42. BONDING COMPANIES**

All matters involving the qualifications and operation of bond persons and bonding companies shall be addressed to the Judges of the Court, who shall hear and dispose of such petitions and applications as they shall determine. All applications for relief pursuant to T.C.A. § 40-11-204 shall be in writing and filed with the Clerk with a copy to the District Attorney General. The Court shall dispose of such applications in open court with both the bonding company and the State being given an opportunity to be heard.

#### **RULE 43. TRIAL CALENDAR**

Cases shall be set by the Court after appearance date by publishing a trial court calendar.

#### **RULE 44. JAILED DEFENDANTS**

In cases wherein the defendant is incarcerated, cannot make bond, and demands a speedy trial, said case shall be placed upon the trial docket by the Judge at the earliest available date.

#### **RULE 45. PROCEDURE DURING TRIAL**

Where there is more than one defendant in a case, defense counsel may agree on the order they shall follow. If counsel are unable to agree, the order in which the defendants are named in the indictment shall be followed. If each defendant is named by separate indictment, the order shall be followed chronologically. Such order shall be followed in the voir dire, pleas, cross-examination, testimony of defendants, and arguments of counsel.

#### **RULE 46. ORDERS IN CRIMINAL CASES**

##### **§ 46.01 Preparation and Submission of Orders By Counsel**

Counsel will prepare orders for entry by the court.

##### **§ 46.02 Disagreements Over Contents of Orders**

When counsel disagree on contents of an order, it will be held by the Judge for three (3) days. After opposing counsel receives a copy of the proposed order, he or she shall immediately notify the court if there is any objection to the order. In that event, a conference shall be scheduled at a time convenient to the parties and the Judge.

#### **RULE 47. PRE-SENTENCE REPORTS**

In any case where preparation of a pre-sentence report is required, the defendant shall report to the office responsible for preparing the report within one week after conviction or entry of plea. The Court will instruct defendants of this Rule where applicable.

#### **RULE 48. SETTING ATTORNEY FEES**

All forms to request compensation for representing indigent felony defendants must be completed by the attorney and presented to the Judge who heard the case. If an attorney represents two or more defendants by appointment at arraignment, he or she can only claim that time once, and not claim the same time as to each defendant. In the event an attorney represents a defendant with multiple indictments on which the defendant is arraigned and tried on the same dates, that attorney should complete only one compensation form showing the time spent on behalf of this defendant, and not separate forms for each case. Failure to follow this rule may result in compensation forms being disallowed by the Court.

#### **RULE 49. SEQUESTERED JURY**

If either party requests a sequestered jury pursuant to T.C.A. § 40-18-116, a Notice of Requested Sequestration of Jurors shall be filed with the Clerk at least ten (10) days prior to the date of trial. A copy of the notice shall be provided to the Trial Judge and court security by the attorney filing the notice.

#### **RULE 50. SENTENCING**

The parties shall file a statement setting forth any enhancement or mitigating factors that the parties believe should be considered by the Court at least five (5) days prior to the date of the sentencing hearing (T.C.A. § 40-35-202). If the District Attorney General requests consecutive sentences for multiple convictions, the District Attorney General shall, at least five (5) days before the scheduled sentencing hearing, file a notice setting forth the factors in T.C.A. § 40-35-115 upon which he or she will rely.

## **RULES APPLICABLE TO CHANCERY COURT**

### **RULE 51. FORMS OF PLEADINGS**

a. All pleadings shall contain a caption and designation as provided by Rule 10.01 Tenn. R. Civ. P. and in addition all complaints, petitions and motions shall, in the designation thereof, contain a short statement of the relief sought, or the nature of the matter contained therein. The Chancellor or the Clerk may refuse to accept a pleading not so styled.

b. All pleadings, addressed to the court, shall be in the following form, to wit: "In the Chancery Court for \_\_\_\_\_ County, Tennessee (designated county where case is pending).

c. All pleadings shall conform to the requirements of Rules 7, 8, 9, 10 and 11, Tenn. R. Civ. P., and any pleading not so conforming may, upon motion of attorney, or by the court sua sponte, be stricken from the docket. Pleadings are requested to be on legal size paper (8 ½" x 14"). However, no pleading shall be refused because of the size of the paper.

d. The Clerk shall note the filing of all pleadings and documents as required by Rule 5.06 Tenn. R. Civ. P.

e. All pleadings and documents bearing the name of a legal firm shall also be signed individually by the member of the firm to whom the case is assigned and shall contain the address, phone number and Supreme Court Disciplinary Number of the attorney filing it.

### **RULE 52. PLEADINGS TO BE FILED**

An original of every pleading to be filed, except interrogatories, requests for production of documents and requests for admissions, shall be filed in all causes.

### **RULE 53. THIRTY (30) DAY EXTENSION TO PLEAD**

Any party may by written stipulation signed by the opposing attorney extend the time for pleading not exceeding thirty (30) days in addition to the period provided by Tenn. R. Civ. P. and provided further that only one (1) such extension shall be granted. An extension not agreed to by stipulation or an additional extension must be granted by the Judge.

### **RULE 54. DISCOVERY**

Answers to interrogatories, requests for production of documents and requests for admissions shall be numbered and shall set forth, immediately preceding the answer, the question made in the same numerical sequence.

No party shall serve on any other party more than thirty (30) interrogatories or requests for admissions without leave of court. For purposes of the Rule a sub-part of an interrogatory shall count as an additional interrogatory. Any motion seeking permission to serve more than thirty (30) interrogatories shall set out the additional interrogatories the party wishes to serve, together with the reasons establishing good

cause for the service of additional interrogatories. If a party is served with more than thirty (30) interrogatories, without leave of court, he or she shall respond only to the first thirty (30). This same Rule shall apply for requests for admission.

a. When responding in any manner, by answer, objection or otherwise to interrogatories, requests for admissions or requests for production, the responding party shall set out the interrogatory or request to which the party is responding immediately before the party's response.

b. Interrogatories under Rule 33 Tenn. R. Civ. P., Requests for Production under Rule 34 Tenn. R. Civ. P., Requests for Admission under Rule 36 Tenn. R. Civ. P., and the responses to these discovery requests shall be served upon other counsel or parties but shall not be filed with the court unless and until it is to be used in court or considered by the Court for any purpose.

c. Depositions under Tenn. R. Civ. P. 30 and 31 shall not be filed with the court except as provided by this rule. The party taking the deposition shall maintain custody of the original deposition during the pendency of the litigation or until the deposition is filed with the court or the court otherwise directs. Depositions shall be filed only as follows:

1. When a deposition provides factual support for a motion or a response to a motion, the deposition shall be filed with the court when the motion or response that it supports is filed;
2. When a deposition is to be read or otherwise used at trial or other proceeding, it shall be filed prior to the conclusion of the trial or other proceeding; or
3. When justice so requires, the court may order the filing of a deposition with the court.

d. The provisions of Rule 11 shall apply to all motions and responses concerning discovery pursuant to Tenn. R. Civ. P. 26 through 37.

## **RULE 55. PROCESS**

The issuance, service and return of process shall be as required by Rule 4 and 5 Tenn. R. Civ. P.

## **RULE 56. APPOINTMENT OF GUARDIAN AD LITEM AND ATTORNEY AD LITEM**

Whenever it is made known to the court, by a pleading or motion that justice requires the representation by a Guardian Ad Litem of a party, or an Attorney Ad Litem, the attorney shall submit an order of appointment leaving blank the name of the person or persons to be appointed.

## **RULE 57. DEFAULT JUDGMENT/AFFIDAVITS**

When a party against whom a judgment or affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default may be entered as follows:

The party entitled to a judgment by default shall apply to the court. All parties against whom a judgment is sought shall be served with a written notice of the application for judgment at least five (5) days before the hearing on the application, regardless of whether the party has made an appearance in the action as provided for in Rule 55.01 Tenn. R. Civ. P.

#### **RULE 58. MOTIONS**

a. All motions, except those made in the course of a hearing or trial, or for the Final Decree Upon Default Judgment as provided in Rule 57, or for Final Decree of Adoption, shall be in writing and conform to the requirements of Rule 7.02 Tenn. R. Civ. P.

b. All motions shall be in writing and shall state with particularity the grounds for the motion and the relief sought. Opposing counsel shall then have fifteen (15) days to file a response to said motion. The attorney who files the motion has the burden to make application for a hearing within thirty (30) days from the time opposing attorney files his response. Failure to comply with this Rule shall be construed by the Court as abandonment of the motion.

c. A copy of the motion shall be served on opposing counsel as required by Rules 6.04 and 6.05 Tenn. R. Civ. P.

d. Motions will be heard at 9:00 a.m. or 1:00 p.m. on days to be set by the Court.

e. At the discretion of the Court, all motions requiring the introduction of proof may be deferred until disposition of motions consisting only of argument of attorneys.

f. All motions for summary judgment and to dismiss supported by evidentiary matters shall be filed at least thirty (30) days before hearing of same as required by Rule 56.04 of the Tenn. R. Civ. P. Attorneys for the proponent of the motion shall deliver memorandum briefs to the Court (with a copy of affidavits and supporting documents), and shall file with the Clerk all original affidavits and supporting documents at least thirty (30) days prior to the hearing of the motion. Attorneys for the respondent shall deliver memorandum briefs to the Court, (with a copy of affidavits and supporting documents), and shall file with the Clerk all original affidavits and supporting documents not later than five (5) days before the hearing as required by Rule 56.04 of the Tenn. R. Civ. P. No motions shall be heard unless the parties comply with this Rule.

#### **RULE 59. TEMPORARY INJUNCTION/HEARINGS AND MOTIONS TO MODIFY OR DISSOLVE INJUNCTIONS**

a. Hearings for temporary injunctions shall be on sworn pleadings, affidavits, counter-affidavits, depositions and/or testimony, which shall be limited to the sole questions of whether or not the temporary injunction is justified, and to disputed material issues of fact.

b. Motions to modify or dissolve injunctions may be heard upon one (1) days notice or less, if so ordered by the Chancellor.

### **RULE 60. MEDIATOR**

a. At the hearing of a cause, or upon motion, a matter may be referred to a Master in accordance with the provisions of Rule 53 Tenn. R. Civ. P., or to a Mediator in accordance with Rule 31 of the Supreme Court Rules.

b. The Court may appoint a Special Master and refer specific issues of law and fact. A Special Master shall receive such compensation as may be fixed by the Court to be taxed as part of the court costs.

c. Upon agreement of the parties or upon order of the court any matter may be referred to a Mediator for a potential resolution of the issues in that cause. The costs of any alternative dispute resolution proceeding, including the costs of the services of the Rule 31 dispute resolution Mediator, at the Mediator's request, may be charged as court costs. The Court may in its sound discretion waive or reduce costs of an alternative dispute proceeding.

### **RULE 61. SETTING CASES FOR TRIAL**

When a case is ready for hearing the attorney for either party may have it set for trial in one of the following ways:

1. By agreement of counsel after consultation with the Clerk and Master;
2. By motion; or
3. By the Court with notice to counsel.

When a case is set by agreement, or when a case is set by motion without objection, all counsel are certifying that they are available for trial and that the case will be in all respects ready for trial on the trial date.

### **RULE 62. SWORN STATEMENT IN DIVORCE ACTIONS**

a. In all contested divorce actions, both parties shall file a sworn statement of assets, liabilities and sources and amounts of income at least seven (7) days prior to the hearing of the action. A copy of the sworn statement shall be served upon opposing counsel. Sworn financial statements shall include, but not be limited to the following:

1. A statement of current earnings;
2. A list of specific present assets accumulated during the marriage;
3. Assets owned by each spouse but not accumulated during the marriage; and
4. A list of present liabilities accumulated during the marriage.

b. Complaints which include requests for pendente lite which are set for hearing by order to show cause, order setting hearing, or fiat shall include a statement of facts justifying the relief sought and, prior to the hearing, all parties will submit affidavits in support or opposition to the relief sought.

### **RULE 63. ARGUMENTS AND BRIEFS**

a. The Court may, in its discretion, limit or direct argument and, in non-jury cases, may choose not to hear closing argument.

b. Briefs may be prepared in advance of the hearing and the court encourages the submission of briefs of law in advance of the hearing of a case. In all matters of hearings of any type, if briefs are to be submitted, they must be delivered to the Court not less than three (3) working days before the hearing. The Court may call for additional briefs.

### **RULE 64. ORDERS**

a. Orders shall be headed by a title indicating the nature thereof. Unless otherwise permitted by the Court, orders shall be presented to the Court within fourteen (14) days after the decision is rendered.

b. Orders shall be prepared by the attorney for the prevailing parties and submitted to the attorneys for other parties for approval. All orders shall bear the signatures of all parties or their attorneys, or a certificate of the attorney or the Clerk that copies have been served on all parties or attorneys of record as required by Rule 58.02 Tenn. R. Civ. P.

c. In the event of a disagreement regarding the proper wording of an order, the attorneys shall submit to the Court their version of what they think is the appropriate order for the Court's determination. They shall also submit one extra copy with the disputed portions clearly marked.

d. Orders approved by all attorneys of record may be left with the Deputy Court Clerk of the Court for the obtaining of the signature of the Chancellor.

e. If orders, as presented, are deemed to contain unnecessary or incorrect wording the Chancellor may revise or have the attorney re-draft the order.

f. Orders shall take effect and speak as of the date of entry on the minutes; provided, that the court may, in its discretion, (nunc pro tunc) permit orders to become effective and speak as of the time of the decision of the case or as of any date between that time and the date of entry on the minutes.

g. The Clerk's office must be assured that all costs have been or will be paid prior to an entry being made on the rule docket that a judgment has been satisfied.

### **RULE 65. MOTIONS FOR NEW TRIAL**

a. Motions for new trial shall be filed and disposed of as provided by Rule 59 Tenn. R. Civ. P.

b. Motions for new trial shall be in writing and filed with the Clerk within thirty (30) days after rendition of a jury verdict or the entry of any decree or judgment to which exception is taken. Such motions shall be presented to the Court and disposed of within thirty (30) days of the date of filing. Additional time may be granted by order of the Court.

c. All motions for new trial shall conform to the following requirements:

1. If a new trial is sought on the ground of error in the charge of the Court, the particular language of the charge of which the complaint is made shall be

quoted. No general reference to the charge as erroneous as a whole shall be regarded as sufficient, but the particular part or parts of the charge complained of must be pointed out and quoted in the written motion for new trial, followed by a statement explaining why it is contended that same is erroneous.

2. It shall not be sufficient to state in general terms that the court erred in the rejection or admission of evidence, but the party seeking a new trial shall, in the motion for new trial, point out the testimony which it is contended was erroneously admitted or excluded, either quoting same literally, giving the substance of it, or otherwise referring to it in such a manner that the exact part of the evidence so admitted or excluded can be identified specifically at the hearing of the motion for new trial.

d. This Rule 65 shall be copied into every transcript of every case hereafter appealed from this Court in which a new trial is sought because of error claimed in the charge of the Court or in the admission or exclusion of evidence.

#### **RULE 66. JURY TRIALS**

a. Whenever a complaint or other pleading in which a jury is demanded is presented for filing, the attorney shall endorse on the face thereof the words, "Jury Demanded", and such fact shall be called to the attention of the Clerk when the case is set for trial.

b. Any party may also upon motion and showing of a right to a jury trial be granted the same.

c. The Court, in its discretion, may require the attorneys in jury cases to submit to the court issues of law and disputed issues of fact forty-five (45) days prior to the commencement of the trial. In addition, the Court may, in its discretion, order the parties to a pre-trial conference.

d. The Court may require the attorneys to pre-mark the exhibits at least seven (7) days before the trial begins. The attorneys are to have enough copies of the exhibits for the Court and each juror.

e. If a party has special jury instructions which they wish the Court to consider, the jury instructions shall be submitted to the Court at least seven (7) days before the trial.

#### **RULE 67. RECORD ON APPEAL**

Transcripts of evidence and all exhibits to be forwarded to the Appeals Court shall be submitted in accordance with the Tennessee Rules of Appellate Procedure.

#### **RULE 68. DISMISSAL FOR LACK OF PROSECUTION**

Whenever a cause has remained on the rule docket for twelve (12) months or more without steps being taken by the plaintiff to dispose of the cause, the Clerk and Master or opposing parties shall be entitled, upon motion, to request the Court for a dismissal of the cause with prejudice at plaintiff's costs.

## **RULE 69. CLERK AND MASTER SALES; BIDS**

From the date of sell of land under a court decree by the Clerk and Master, the bidding may be reopened within ten (10) days. In order to reopen the bidding, the original bid must be raised by at least ten percent (10%), unless the Court orders otherwise.

If any person proposes to advance the bid the required amount, he or she shall deliver to the Clerk cash or a check for the amount of the raised bid. Upon the delivery of the cash or check and its acceptance by the Clerk, the Clerk shall, upon demand, refund to the original bidder all money paid or notes executed by him or her as a purchaser.

It is not required that the resale of the property be advertised. The parties to the lawsuit, however, may choose to have the Clerk advertise the resale of the property.

## **RULE 70. INVESTING FUNDS PER COURT ORDER**

The Clerk and Master's office shall invest litigant's fund paid into court only if there is a court order directing them to do so. The order should state the name of the financial institution in which the funds are to be invested and the specific type of account to be utilized. At the time of payment or when the order is entered, if later, it shall be the **DUTY OF THE ATTORNEY** seeking investment of funds to specifically notify the Clerk receiving payment that the funds are to be invested and to provide an IRS form W-9 to the Clerk and Master's bookkeeping department for the party responsible for tax liability.

## **RULE 71. CONTINUANCES**

a. Cases may be continued by agreement and approval of the Court. Application for a continuance of any case set for trial must be made five (5) full days in advance of the day the case is set for trial and must be supported by an affidavit filed with the Clerk of the court giving grounds for seeking a continuance. If within five (5) days of trial, circumstances justifying a continuance should arise which were not reasonably foreseeable to the parties or counsel, the Court may entertain and grant a motion for continuance less than five (5) days before trial, upon notice to all parties and an opportunity for a hearing.

b. Normally, the absence of a witness will be grounds for a continuance where the subpoena for a local witness was issued five (5) days or more before the date of trial, and seven (7) days where the witness is out of the county; however, each application for a continuance is subject to the discretion of the Court.

c. When application for a continuance is based upon the illness of a party, or a material witness, said application must be accompanied by a written statement of a physician specifying the type of illness, whether or not the illness is of a temporary or permanent nature, and whether or not such person is able to appear in court.

d. When application is based upon the fact that a material witness cannot be found, an affidavit must be filed giving the name of said witness or witnesses, what evidence is expected to be proved by said witness or witnesses, and what effort has been made to locate said witness or witnesses.

e. If a case is continued or settled, the attorney who had subpoenas issued for witnesses is responsible for notifying said witnesses not to appear. Failure to do so could result in costs being assessed against that party.

f. If a case is continued, a new trial date may be ordered by the Court for a date certain at the time the motion for continuance is granted.

#### **RULE 72. BENEFIT REVIEW CONFERENCE FOR CONTESTED WORKERS' COMPENSATION CASES**

The parties in all contested workers' compensation cases must participate in a benefit review conference prior to the case being tried unless such conference is not required by T.C.A. § 50-6-239. Upon the filing of a motion and a showing of good cause, the parties may be excused from participation in the benefit review conference. Prior to requesting a benefit review conference, claimant's discovery will be taken, any needed medical evaluations will be conducted, and interrogatories and exchanging of evidence will be completed.

WHEREFORE, IT IS CONSIDERED, ORDERED, AND ADJUDGED, the foregoing Rules of Civil, Criminal, and Chancery Courts are hereby adopted and shall be forthwith entered upon the Minutes of all Divisions of said Court.

IT IS FURTHER ORDERED, that a copy of these Rules adopted by this Court shall be furnished to the Executive Secretary of the Supreme Court of Tennessee and a copy of all amendments thereafter made shall, upon their promulgation, be filed in said office.

IT IS FURTHER ORDERED AND ADJUDGED, THAT THESE Rules shall become effective on the 1<sup>st</sup> day of September, 2000.

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Joe C. Morris  
Chancellor

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Roy B. Morgan, Jr.  
Circuit Judge, Division I

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Donald H. Allen  
Circuit Judge, Division II

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Roger A. Page  
Circuit Judge, Division III