

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: AMENDMENTS TO TENNESSEE RULES
 OF APPELLATE PROCEDURE**

Filed: December 29, 2005

ORDER

The Court adopts the attached amendments effective July 1, 2006, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 7(a) STAY OR INJUNCTION PENDING APPEAL;
RULE 18 APPEALS BY POOR PERSONS.

FOR THE COURT:

WILLIAM M. BARKER
CHIEF JUSTICE

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 7

STAY OR INJUNCTION PENDING APPEAL

[Add the following as the new third paragraph to Rule 7(a).]

A party may appeal the Court of Appeals' decision on a motion for review by filing a motion for review in the Supreme Court within 15 days of filing of the Court of Appeals' order. The motion shall be accompanied by a copy of the trial court's order, the motion filed in the Court of Appeals, the order of the Court of Appeals, and all other documents (including transcripts) filed in the Court of Appeals on the issue of stay or injunction pending appeal. Review shall be had without briefs after reasonable notice to the other parties, who shall be served with a copy of the motion. The other parties may file an answer within 10 days of the filing of the motion in the Supreme Court. No oral argument shall be permitted except when ordered on the court's own motion. Review shall be completed promptly.

2006 Advisory Commission Comment

A third paragraph is added to Rule 7(a) to provide a procedure for the Supreme Court's review of the Court of Appeals' decision on a Rule 7 motion.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 18

APPEALS BY POOR PERSONS

(d) Motion in an Appellate Court for Leave to Proceed as a Poor Person on Appeal. If a party to an action on appeal is unable to bear the expenses of the appeal due to poverty, but that party has not sought leave from the trial court to proceed on appeal as a poor person, or that party becomes indigent during the appeal, the party may seek leave from the appellate court to proceed on appeal as a poor person. A motion for leave to proceed on appeal as a poor person filed in the appellate court shall be accompanied by a Uniform Affidavit of Indigency as set forth in Supreme Court Rule 13 (criminal cases) or by a Uniform Civil Affidavit of Indigency as set forth in Supreme Court Rule 29 (civil cases). If leave to proceed as a poor person is denied by an intermediate appellate court, the appellate court shall state in writing the reasons for the denial.

(e) Subsequent Proceedings on Denial by an Intermediate Appellate Court of Leave to Proceed as a Poor Person on Appeal. If leave to proceed as a poor person is denied by an intermediate appellate court, or an intermediate appellate court finds that the party is not entitled so to proceed, the clerk of the appellate courts shall forthwith serve notice of such action. A motion for leave to proceed as a poor person may thereafter be filed in the Supreme Court within 15 days after service of notice of the action of the intermediate appellate court. The motion shall be accompanied by copies of any papers filed in the trial and appellate courts seeking leave to proceed as a poor person and by a copy of the statement of reasons given by the trial and intermediate appellate courts for their actions.

2006 Advisory Commission Comment

Prior to this amendment, the rule authorized trial courts to determine whether a party should be permitted to proceed on appeal as a poor person, but the Rule did not expressly authorize an appellate court to do so. In some cases, however, the issue of a party's financial condition does not arise until after the notice of appeal is filed. New paragraphs (d) and (e) give the appellate courts the authority to determine whether an appealing party should be permitted to proceed on appeal as a poor person; it should be noted, however, that the new paragraphs do not preclude the appellate court from remanding the matter to the trial court for a hearing on the issue, if necessary. The term "poor person" as used in the Rule is intended to refer to persons who are indigent for purposes of Rule 13 (appointment, qualifications and compensation of counsel for indigent defendants), or Rule 29 (uniform civil affidavit of indigency), Tenn. S. Ct. R., or any other provision of law.

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

**IN RE: AMENDMENTS TO TENNESSEE RULES OF CIVIL
PROCEDURE**

Filed: December 29, 2005

ORDER

The Court adopts the attached amendments effective July 1, 2006, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 8.03	GENERAL RULES OF PLEADING;
RULE 23.05	CLASS ACTIONS;
RULE 32.01(3)	USE OF DEPOSITIONS IN COURT PROCEEDINGS;
RULE 34A	SPOILIATION OF EVIDENCE;
RULE 37	FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS;
RULE 41.01	DISMISSAL OF ACTIONS [COMMENT ONLY];
RULE 69	EXECUTION ON JUDGMENTS.

FOR THE COURT:

WILLIAM M. BARKER
CHIEF JUSTICE

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 8

GENERAL RULES OF PLEADING

. . . .

8.03 Affirmative Defenses.—In pleading to a preceding pleading, a party shall set forth affirmatively facts in short and plain terms relied upon to constitute accord and satisfaction, arbitration and award, express assumption of risk, comparative fault (including the identity or description of any other alleged tortfeasors), discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, statute of repose, waiver, workers' compensation immunity, and any other matter constituting an affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

2006 Advisory Commission Comment

The affirmative defenses of statute of repose and workers' compensation immunity are added to the list in Rule 8.03.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 23

CLASS ACTIONS

23.05 Dismissal or Compromise.—A certified class action shall not be voluntarily dismissed or compromised without approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If attorney fees are sought as part of a compromise, a motion for fees must be filed and served on all parties and, for motions by class counsel, directed to class members in a reasonable manner. A class member, or a party from whom payment is sought, may object to the motion.

2006 Advisory Commission Comment

The second and third sentences of Rule 23.05 are new. Objections can be made to attorney fees sought as part of a settlement.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 32

USE OF DEPOSITIONS IN COURT PROCEEDINGS

32.01 Use of Depositions.—At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Tennessee Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof in accordance with any of the following provisions:

. . . .

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds that the witness is “unavailable” as defined by Tennessee Rule of Evidence 804(a). But depositions of experts taken pursuant to the provisions of Rule 26.02(4) may not be used at trial except to impeach in accordance with the provisions of Rule 32.01(1).

2006 Advisory Commission Comment

The new language in Rule 32.01(3) incorporates by cross-reference all of the unavailability grounds listed in Evidence Rule 804(a). That list includes deponents who are more than 100 miles from the courthouse on trial day. The more restrictive provision for discovery depositions of experts is retained.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 34A

SPOILIATION OF EVIDENCE

34A.01 Testing of Tangible Things.—Before a party or an agent of a party, including experts hired by a party or counsel, conducts a test materially altering the condition of tangible things that relate to a claim or defense in a civil action, the party shall move the court for an order so permitting and specifying the conditions. Rule 37 sanctions may be imposed on an offending party.

34A.02 Other Spoliation.—Rule 37 sanctions may be imposed upon a party or an agent of a party who discards, destroys, mutilates, alters, or conceals evidence.

2006 Advisory Commission Comment

The rule has a new, broader heading. Rule 34A.02 is new. Also, Rule 37 sanctions are made available against offenders. Those sanctions include, at 37.02, refusal to allow claims or defenses; even dismissal of a plaintiff's complaint and entry of default judgment against a defendant are possible.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 37

FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS

37.03 Failure to Disclose or Refusal to Admit.--

[Number existing language as paragraph (2) and add the following language as paragraph (1):]

(1) A party who without substantial justification fails to supplement or amend responses to discovery requests as required by Rule 26.05 is not permitted, unless such failure is harmless, to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court on motion may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses (including attorney fees) caused by the failure, these sanctions may include any of the actions authorized under Rule 37.02(A), (B), and (C) and may include informing the jury of the failure to supplement or amend.

2006 Advisory Commission Comment

Rule 37.03(1) expressly provides sanctions for failure to supplement or amend discovery responses. The usual sanction will be exclusion of evidence at trial. Courts already have this power under the common law. *Lyle v. Exxon*, 746 S.W.2d 694 (Tenn. 1988), and *Ammons v. Bonilla*, 886 S.W.2d 239 (Tenn. Ct. App. 1994).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 41

DISMISSAL OF ACTIONS

41.01 Voluntary Dismissal—Effect Thereof.—

2006 Advisory Commission Comment

Although Rule 41.01(2) allows two nonsuits without prejudice, a plaintiff must carefully consider the *separate* issue of whether the saving statute, T.C.A. § 28-1-105, authorizes a recommencement of the plaintiff's action after a nonsuit. A plaintiff should note that taking a second nonsuit, which is permitted by Rule 41.01(2), does not initiate a second one-year period for recommencing the action under the saving statute. *See Payne v. Matthews*, 633 S.W.2d 494, 495-96 (Tenn. Ct. App. 1982) (stating, "It has long been held that after the taking of any nonsuit to the original action, any additional suits would have to be filed within one year of the first nonsuit to be within the purview of T.C.A. Sec. 28-1-105.").

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 69

EXECUTION ON JUDGMENTS

69.07 Execution on Realty.—

. . . .

(2) Judgment Lien.—A judgment lien against the judgment debtor’s realty is created by registering a certified copy of the judgment in the register’s office of the county where the realty is located. Once a judgment lien is created by registration, it will last for the time remaining in a ten-year period from the date of final judgment entry in the court clerk’s office and for any extension granted by the court pursuant to Rule 69.04. For the extension of the lien to be enforceable, the judgment creditor must register the court’s order extending the judgment.

2006 Advisory Commission Comment

The only change in Rule 69.07(2) is to drop the final word in the original paragraph, “lien.” The court’s order granted pursuant to Rule 69.04 extends the judgment, not the judgment lien. The lien is extended by registering that order.

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AT NASHVILLE**

IN RE: AMENDMENT TO TENNESSEE RULES OF EVIDENCE

Filed: December 29, 2005

ORDER

The Court adopts the attached amendment effective July 1, 2006, subject to approval by resolutions of the General Assembly. The amended rule is:

RULE 604 INTERPRETERS.

FOR THE COURT:

WILLIAM M. BARKER
CHIEF JUSTICE

TENNESSEE RULES OF EVIDENCE

RULE 604

INTERPRETERS

An interpreter is subject to the provisions of these rules and applicable statutes relating to qualifications as an expert and the administration of an oath or affirmation to make a true interpretation.

2006 Advisory Commission Comment

The last word is changed from "translation" to "interpretation."

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE RULES
OF JUVENILE PROCEDURE

Filed: December 29, 2005

ORDER

The Court adopts the attached amendments effective July 1, 2006, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 1 TITLE OF RULES; SCOPE; PURPOSE AND CONSTRUCTION;
 SITUATIONS NOT COVERED BY RULES;

RULE 25 DISCOVERY;

RULE 33 PREDISPOSITION REPORT/SOCIAL HISTORY.

FOR THE COURT:

WILLIAM M. BARKER

CHIEF JUSTICE

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 1

TITLE OF RULES; SCOPE; PURPOSE AND CONSTRUCTION; SITUATIONS NOT COVERED BY RULES

(b) Scope. These rules shall govern the procedure in Juvenile Court in all cases in which children are alleged to be delinquent, unruly, dependent and neglected, or abandoned; in all cases involving emergency temporary care under T.C.A. §37-1-128; in all cases to revoke the probation of delinquent or unruly children; and in all cases to terminate home placements under T.C.A. §37-1-137. The procedures employed in General Sessions Court under the Tennessee Rules of Criminal Procedure shall govern all cases in which children are alleged to have committed juvenile traffic offenses as defined in T.C.A. §37-1-146 and all cases heard in juvenile court involving child abuse prosecutions under T.C.A. §37-1-412 and §39-15-401, nonsupport of children, or contributing to the delinquency or unruly behavior or dependency and neglect of children. The Tennessee Rules of Civil Procedure shall govern all cases involving the termination of parental rights, paternity cases, guardianship and mental health commitment cases involving children, and child custody proceedings under T.C.A. §§36-6-101 et seq., 36-6-201 et seq., and 37-1-104(a)(2) and (f); however, discovery in such cases in juvenile court shall be governed by Rule 25 of these rules. In a case governed by the Rules of Civil Procedure pursuant to the preceding sentence, any of those rules may be suspended by the court if the interests of justice so require. Contempt proceedings shall be conducted pursuant

to the procedures applicable in courts of general jurisdiction.

2006 Advisory Commission Comment

Rule 1(b) is amended to ensure that children and their families in specified domestic relations cases pending in the Juvenile courts enjoy the same procedures, rights, and rules as those children and families have in similar cases pending in Circuit, Chancery, or other courts with concurrent jurisdiction.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 25

DISCOVERY

[Add three sentences to the existing rule.]

A party to a civil action in juvenile court that is otherwise governed by the Tennessee Rules of Civil Procedure may serve notice of or request for discovery on another party. The party on whom notice or request is served may seek a protective order with regard to the notice or request. Leave to obtain discovery shall be freely given when justice so requires.

2006 Advisory Commission Comment

The final three sentences are new. The amendment is intended to allow discovery in Juvenile Court on issues other than those in delinquency and unruly proceedings.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 33

PREDISPOSITION REPORT/SOCIAL HISTORY

(e) Inspection of Reports; Confidentiality. Generally, the child, the child's attorney, the child's parent, guardian or legal custodian, and other parties shall be entitled to inspect and obtain copies of the predisposition report and all medical, psychological and other reports on which it is based, except that information protected from disclosure by law. However, the court in its discretion may decline to permit inspection or copying of sensitive reports, or portions thereof, to anyone other than an attorney if it determines that such inspection would be detrimental to the child. If a party is unrepresented and is denied the right to inspect and make copies, an attorney shall be appointed for the party and shall be permitted to inspect and copy reports as herein provided. The court shall issue such orders as are necessary to maintain the confidential nature of information so classified. However, in order to permit response pursuant to Rule 32(f), the court shall disclose, at least to attorneys for the parties, any confidential information relevant to disposition.

2006 Advisory Commission Comment

The amendment allows parties to inspect and copy reports. The court has discretion to limit inspection to attorneys of parties.