

**LOCAL RULES OF CIVIL PRACTICE
CHANCERY AND CIRCUIT COURTS
ELEVENTH JUDICIAL DISTRICT (HAMILTON COUNTY), TENNESSEE
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RULE 1 EFFECTIVE DATE, APPLICABILITY, SUSPENSION, AND CITATION OF RULES.

- 1.01 Effective Date.** Effective 1 September 2007, the Chancery and Circuit Courts of the Eleventh Judicial District (Hamilton County, Tennessee) abrogate all existing local rules of practice and adopt these rules.
[Adopted effective September 1, 2007.]
- 1.02 Applicability.** Rules 1 through 14 apply in Chancery and Circuit Courts.
[Adopted effective September 1, 2007.]
- 1.03 Suspension.** The Judges of the Court retain discretion to suspend any of these rules for good cause.
[Adopted effective September 1, 2007.]
- 1.04 Citation.** These rules may be cited as LRCP.
[Adopted effective September 1, 2007.]

RULE 2 DEFINITIONS AND FORMS.

- 2.01 Definitions.** As used in these rules, the term “Clerk” shall include the Clerk and Master and the term “Judge” shall include Chancellor.
[Adopted effective September 1, 2007.]
- 2.02 Forms.** These rules require the filing or lodging of various forms. Parties and their attorneys may use the forms available from the Clerk or forms equivalent in content and format thereto.
[Adopted effective September 1, 2007.]

RULE 3 PLEADINGS AND OTHER PAPERS.

- 3.01 Cost Bonds.** For every pleading, which seeks affirmative relief, including counterclaims, cross-claims, and third-party complaints, a surety shall execute a bond for costs in the following form:

COST BOND

I hereby acknowledge and bind myself for the payment of all non-discretionary costs that may be adjudged herein against _____, the principal, in the event that the principal does not pay them.

Witness my hand this _____ day of _____, 20____.

Signature

Name

Address

Telephone

The bond shall be attached to the pleading or filed separately. The surety shall not be released from the obligation as surety until there is provision for a substitute surety.

[Adopted effective September 1, 2007.]

- 3.02 Civil Case Cover Sheet.** A fully completed Civil Case Cover Sheet shall accompany every pleading which seeks affirmative relief. Parts VI and VIII of a Civil Case Cover Sheet shall be completed and accompany every answer or

other initial responsive pleading. Civil Case Cover Sheets are required solely for administrative purposes, and matters appearing only on cover sheets have no legal effect in the action.

[Adopted effective September 1, 2007.]

- 3.03 Facsimile Number.** In addition to the identifying information that Rule 11.01 of the Tennessee Rules of Civil Procedure requires, pleadings and other papers shall bear the facsimile telephone number, if available, of the filing attorney or *pro se* litigant.

[Adopted effective September 1, 2007.]

- 3.04 Original Signatures.** Papers to be filed or lodged that require the signature of a party, the party's counsel, or other individual or entity shall contain the original signature, preferably in blue ink unless they are filed or lodged by facsimile pursuant to Rule 5A of the Tennessee Rules of Civil Procedure.

[Adopted effective September 1, 2007.]

- 3.05 Extraordinary Relief.** Complaints for writs of certiorari, writs of attachment, restraining orders, or other extraordinary relief shall be first filed with the Clerk and verified. Otherwise they must be accompanied by affidavit setting forth the facts justifying the relief sought.

[Adopted effective September 1, 2007.]

- 3.06 Ex parte Approvals.** Petitions for the approval of workers' compensation claims, minors' claims, name changes, and other similar matters shall be prescheduled with the Court or filed with the Clerk before being presented to the Judge for approval.

[Adopted effective September 1, 2007.]

RULE 4 CERTIFICATES OF SERVICE, SUBMISSION OF PAPERS, AND FILES.

- 4.01 Certificates of Service.** (a) After suit is commenced, all papers required to be served on a party by any person except the Clerk shall contain a certificate of service that recites the name and address of each person served and the date and method of service.

(b) In *ex parte* matters, copies of motions and other papers shall be mailed to interested parties. Such papers must contain a certificate of service that includes the name and address of the interested parties served and the date of service.

(c) Any notice of appeal from a judgment of the Court shall be served on the court reporter, if any, and the certificate of service accompanying the notice shall so reflect.

[Adopted effective September 1, 2007.]

- 4.02 Submission of Papers and Copies.** All papers to be filed or lodged, including pleadings, motions, briefs, and proposed judgments and orders, shall be filed or lodged with the Clerk. Such papers shall not be mailed to or left with the Judge but shall be submitted to the Clerk for proper handling. No copy of any paper shall be provided to the Judge unless the Judge so requests.

[Adopted effective September 1, 2007.]

- 4.03 Files.** All files and records of the Court shall at all times be under the custody and control of the Clerk. Files may not be withdrawn without permission of the Clerk and the Judge.

[Adopted effective September 1, 2007.]

- 4.04 Filing of Discovery.** Filing of discovery is not mandatory unless in support of a motion.

[Adopted effective September 1, 2007.]

RULE 5 ORDERS AND COSTS.

- 5.01 Preparation.** (a) Unless otherwise ordered, in every case or motion disposed of by an oral ruling of the Court, counsel for the prevailing party shall prepare the Order or Judgment, except, in Chancery Court, the Court shall prepare orders setting cases for trial and the Clerk shall prepare, in probate cases, orders confirming reports of the Master on accountings and settlements, authorizing the initial issuance of letters, and referring exceptions to claims, year's support, homestead, exempt property, and elective share to the Master.

(b) Unless the Court allows a greater time, the Order or Judgment shall be prepared and forwarded to adversary counsel within five (5) business days of the hearing or trial. *Ex parte* orders shall be lodged with the Clerk within five (5) business days of the hearing. Orders shall not be lodged granting or denying any relief before the Court passes on the issue, except for agreed orders signed by all counsel or *pro se* parties.

(c) If counsel fails to prepare and lodge Orders with the Court within fourteen (14) days of the announcement of an agreement or a ruling, the Court may strike or dismiss the subject motion or pleading.

[Adopted effective September 1, 2007.]

- 5.02 Approval.** (a) Unless waived by the Court, all orders proposed to be entered shall be submitted to all parties or their counsel for approval. Counsel shall promptly review a proposed order and approve it if it accurately reflects the ruling of the Court or notify the adversary of specific objections.

(b) In matters involving five (5) or more parties, the Court will, upon application and in proper circumstances, allow

orders to be filed in accordance with LRCP 5.03.

[Adopted effective September 1, 2007.]

- 5.03 Proposed Orders.** (a) No proposed order may be lodged with the Clerk until it has been submitted to all other parties or their counsel and they have refused to approve it or failed to respond within eight (8) business days of service, unless waived by the Court. Orders lodged under this rule shall bear the word “PROPOSED” at the top of the Order. (b) After the proposed order is lodged, adverse parties having objections to the proposed order shall file specific objections thereto, accompanied by their own proposed order, within five (5) business days. (c) Nine (9) business days after the proposed order is lodged under this rule, the Clerk shall deliver all proposed orders including any exception or objection to the Judge for action.

[Adopted effective September 1, 2007.]

- 5.04 Taxing of Costs.** (a) All final orders shall provide for the assessment of court costs. (b) Orders for payment of costs shall be rendered jointly against the party and the party’s sureties, if any.

[Adopted effective September 1, 2007.]

- 5.05 Re-Taxing of Costs.** For good cause, the Clerk may move the Court for a re-taxing of court costs pursuant to Tenn. Code Ann. § 20-12-137.

[Adopted effective September 1, 2007.]

RULE 6. MOTIONS

- 6.01 Authority.** All motions shall be in writing and cite the rule, statute or other authority for the relief sought. Motions not citing proper authority or citing only Rule 7.02 of the Tennessee Rules of Civil Procedure shall be stricken.

[Adopted effective September 1, 2007.]

- 6.02 Schedule and Call.** (a) In Chancery Court, Part 1, motions will be heard at 8:00 a.m. on the first (1st) and third (3rd) Mondays of each month. In Chancery Court, Part 2, motions will be heard at 8:00 a.m. on the second (2nd) and fourth (4th) Mondays of each month. When a motion day falls on a holiday, motions will be heard on the next business day, unless another date is announced and posted. Motions may be heard at other times with the consent of the Judge. In both parts of Chancery Court, motions will be called at the Court’s first regularly scheduled motion day occurring no less than 5 business days after the filing of the motion. Notice of the date and time of the hearing shall be placed on the motion. (b) Motions in Circuit Court will be heard on Mondays except on holidays, commencing in Division I at 9:00 a.m. Motions may be heard at other times with the consent of the Judge. Motions filed by 4:00 p.m. on Thursday will be called the second following Monday.

[Adopted effective September 1, 2007.]

- 6.03 Exhibits.** The underlying document(s) that are the subject of the motion shall be an exhibit(s) to the motion.

[Adopted effective September 1, 2007.]

- 6.04 Responses.** Responses to motions are allowed but not required, except responses to motions citing Rules 12, 26 through 37, and 56 of the Tennessee Rules of Civil Procedure. Failure to file a required response by 4:00 p.m. at least 2 business days preceding the date that the motion is to be called may result in the granting of the motion.

[Adopted effective September 1, 2007.]

- 6.05 Briefs.** A memorandum of law shall accompany every motion or response which may require the resolution of an issue of law. Any motion, response, brief, or memorandum of law that makes reference to a transcript or deposition shall specify the relevant page(s) of the transcript or deposition and attach those pages. Any brief that cites a foreign case shall have a copy of the case attached or the Court may disregard the authority.

[Adopted effective September 1, 2007.]

- 6.06 Dispositive Motions.** Only the relevant portion(s) of any discovery materials used to support a motion for dismissal, judgment on the pleadings, or summary judgment or response thereto shall be filed.

[Adopted effective September 1, 2007.]

- 6.07 Failure to Appear; Late Appearance.** Unless otherwise excused, a failure to appear shall result in a motion being stricken or adjudicated as the Court orders. If there is to be a late arrival or attendance in another Court, counsel shall notify the Judge’s office and other counsel or request a continuance of the motion and notify other counsel thereof before the hearing.

[Adopted effective September 1, 2007.]

- 6.08 Priorities.** Motions requiring oral testimony will be heard after motions not requiring such evidence. Non-jury matters may be heard on a motion day, but motions in any Court take priority over non-jury matters.

[Adopted effective September 1, 2007.]

RULE 7. CASE MANAGEMENT

7.01 Case Assignment and Reassignment. Cases in Chancery Court are assigned sequentially by Part. However, all matters pertaining to guardians, conservators, mental health appointments, and adoptions, when filed in Chancery Court are assigned to Part 1, and all matters pertaining to probate and the construction of trusts are assigned to Part 2. All cases in Circuit Court are assigned sequentially by Division. Any case previously filed and dismissed and then refiled will be assigned to its previously assigned Part or Division. When both an order of protection and a divorce are pending, the Part or Division of the Court in which case is first filed will assume jurisdiction over both proceedings.

[Adopted effective September 1, 2007.]

7.02 Setting of Cases. (a) Cases shall be set by motion, agreed order, or action of the Court. When a case is set on an unopposed motion or by agreement, counsel are deemed to have certified that they are available for trial and the case is in all respects ready for trial.

(b) When a party objects to having a case set because trial preparation is not complete, the Court may issue a scheduling order establishing deadlines for completing trial preparation and setting a trial date.

(c) Conferences, default hearings, and other uncontested matters shall be set by appointment with the Judge's office.

[Adopted effective September 1, 2007.]

7.03 Continuances. Cases may be continued only by leave of the Court by written order or if the case is one referred to the Master, by leave of the Master as provided in LRCP 12.03. Failure to complete discovery or prepare for trial shall not necessarily constitute grounds for a continuance.

[Adopted effective September 1, 2007.]

7.04 Trial Docket. (a) Unless otherwise ordered, trials and other contested evidentiary matters will be assigned for hearing at 9:30 a.m. in Chancery Court and 9:00 a.m. in Circuit Court. Attorneys and parties shall be prompt for all sessions. Unless an Order continuing, settling, or dismissing the matter has been filed prior to the morning of trial, cases set for trial by Order are subject to dismissal or entry of judgment upon the failure of plaintiff to appear or upon failure of defendant to appear respectively.

(b) In the event a case ready for trial on the day assigned is not reached on that day, the case will be reset for trial on the first available trial date or held in line at the Court's discretion.

[Adopted effective September 1, 2007.]

7.05 Dismissal of Dormant Cases. (a) If no action is taken in a case for 270 days, the Court may dismiss the case. Thirty (30) days before such a dismissal, the Clerk or Judge shall notify counsel or post a Procedural Steps List containing the name and docket number of each case to be dismissed. The Procedural Steps List shall be prominently posted in the Clerk's office and on the web site (<http://www.hamiltontn.gov/courts>).

(b) The Clerk shall mail to counsel of record and unrepresented parties whose address can be ascertained from information in the file copies of each order dismissing a case for want of prosecution.

[Adopted effective September 1, 2007.]

7.06 Withdrawal of Counsel. Once counsel has made a general appearance, counsel may not withdraw except for good cause, by motion and order of the Court.

[Adopted effective September 1, 2007.]

RULE 8. TRIAL

8.01 Jury Demand. When a jury is demanded in accordance with Rule 38 of the Tennessee Rules of Civil Procedure, the document demanding a jury and all subsequent documents filed in the case shall bear the words "JURY DEMAND" in capital letters in the caption of the case above the space for the case number.

[Adopted effective September 1, 2007.]

8.02 Pretrial Schedule. (a) At least ten (10) business days before trial, the parties shall submit to the Court in writing any contested issues of law to be addressed by the Jury or the Court together with citations of authority and/or briefs. A Trial Brief shall be a concise statement of the issues and law supported by appropriate citations. If a citation is to a decision not fully reported in Southwest Reporter, Tennessee Decisions, a copy of the entire text of the decision shall be attached to the brief.

(b) At least ten (10) business days before trial, the party first demanding a jury shall file a proposed jury charge on any issue not addressed by the Tennessee Pattern Instructions and proposed jury verdict forms. At least five (5) days before trial, the other parties shall file any proposed changes to the proposals. This rule shall not preclude the parties from filing jury requests concerning contested issues arising during the trial.

(c) At least ten (10) business days before trial, each party shall file and serve by facsimile or by hand: ¹⁾ a Witness List, including names, addresses, and, if known, telephone numbers of all witnesses, including rebuttal witnesses; and ²⁾ an Exhibit List, including rebuttal exhibits. Within five (5) business days of the receipt of an Exhibit List, the recipient shall file and, by facsimile or hand, serve any objections to authenticity of any exhibit or such objection shall be deemed waived. At least five (5) business days before trial, the recipient shall file and serve all other objections. Witnesses and exhibits not identified in compliance with this rule shall not be utilized at trial.

(d) If the parties anticipate the use of more than fifty (50) trial exhibits, they shall so notify the Court. Before trial, the parties shall meet to examine or exchange all trial exhibits and, if the Court so directs, pre-mark all trial exhibits in sequential order without designation as to plaintiff or defendant. Any marked exhibit the admissibility of which the parties dispute shall be marked for identification only. Unless a marked exhibit is marked for identification only, its

admissibility shall be deemed to be undisputed. The parties shall file a list of any marked exhibits no later than the morning of trial.

[Adopted effective September 1, 2007.]

8.03 Record of Proceedings. It is the responsibility of litigants to arrange for court reporters to record the proceedings of the Court.

[Adopted effective September 1, 2007.]

8.04 Control and Disposal of Exhibits. (a) All trial exhibits shall be accounted for and placed in the custody of the court reporter unless otherwise directed by the Court.

(b) If no appeal is filed, the parties shall have forty-five (45) days to withdraw exhibits and depositions after entry of the final judgment. The court reporter or Clerk may destroy or dispose of exhibits and depositions not withdrawn from their possession.

[Adopted effective September 1, 2007.]

8.05 Settlement. When a case is set for trial and the parties reach a settlement, the parties shall give immediate notice of the settlement to the Court. Counsel shall notify witnesses that they are excused from attending court due to the settlement. In the event that notice is not given, economic sanctions may be imposed.

[Adopted effective September 1, 2007.]

RULE 9. DECORUM

9.01 Attire. Counsel, litigants, witnesses, court reporters, and court officers shall not dress in a manner which detracts from proper decorum in the court.

[Adopted effective September 1, 2007.]

9.02 Bar Space. The space within the bar in the courtroom is reserved for attorneys, legal assistants, and litigants actually engaged in trial. All other persons will be seated outside the bar.

[Adopted effective September 1, 2007.]

9.03 Bench Conferences. Bench conferences should be requested only when absolutely necessary in aid of a fair trial. The conferences shall be conducted in a professional manner.

[Adopted effective September 1, 2007.]

9.04 Counsel, Litigant, and Spectator Conduct. When Court is in session, all persons present shall be seated at all times except when addressing the Court and shall not talk, laugh, or otherwise make any noise. All cell phones and beepers must be turned off.

[Adopted effective September 1, 2007.]

9.05 Forbidden Conduct. Counsel and witnesses are prohibited from using curse or swear words even when quoting others. When quoting others, counsel and witnesses shall omit any offensive word and state only the first letter of the word. Any deviation from this rule requires prior permission from the Court.

[Adopted effective September 1, 2007.]

9.06 Juror Contact. No attorney, party, witness, or any other person interested in a case being tried shall engage in any conversation with any juror until such juror's service for the term has ended.

[Adopted effective September 1, 2007.]

RULE 10. DOMESTIC RELATIONS

10.01 Financial Statements. (a) Both parties in all domestic relations cases in which support is an issue shall file and serve an affidavit, stating all income as of the date of execution, at least ten (10) days before trial. This affidavit is available from the Clerk. A party shall compile and file an affidavit stating expenses only if: i) alimony is sought or resisted; ii) a deviation from child support guidelines is sought; or iii) it is contended the income statement is not representative of future income. If a party fails to file a statement of income required herein, the other party shall file an affidavit containing a good-faith estimate of the income of the defaulting party.

(b) In all divorce cases, at least ten (10) days before trial, both parties shall file and serve verified financial statements listing all assets, the date of their acquisition, their purchase price, any encumbrance thereon, and their present market value and all liabilities, including the date of their incurrence, the remaining balance, and the amount of monthly payments thereon. The list of assets and liabilities shall include all assets and liabilities of the parties, whether individual or joint, and specify whether they were acquired or incurred before or during the marriage. If the division of marital property is disputed at least ten (10) days before trial, the parties shall also file a proposed division of marital property and liabilities, identifying any disputed separate property and jointly executed agreed stipulations.

(c) Failure to file the statements required herein shall result in dismissal or continuance of the case, entry of default judgment against the non-complying party, or other appropriate sanctions in the Court's discretion.

[Adopted effective September 1, 2007.]

- 10.02 *Pendente Lite* Hearings.** (a) *Pendente lite* hearings for child support shall be heard only on motion accompanied by an affidavit containing a good-faith estimate of the income of the non-custodial party, the amount of time that the child spend(s) with each party, and the number of persons who reside with each party. If the non-custodial party contests any such estimate, within 5 business days after receipt of the motion from the custodial party, that party shall file and serve his or her own affidavit.
- (b) *Pendente lite* hearings for alimony shall be heard only on motion accompanied by an affidavit stating income and expenses. Within five (5) business days after receipt of the motion, the non-moving party contesting alimony shall file an affidavit delineating all income and expenses.

[Adopted effective September 1, 2007.]

- 10.03 Default Divorce Setting; Failure to Appear.** Any uncontested divorce passed for good cause must be passed to a day certain by order with at least 10 days notice to the other party. Failure of the plaintiff or plaintiff's counsel to appear, ready for trial, will result in the case being passed or dismissed, in the discretion of the Court.

[Adopted effective September 1, 2007.]

10.04 Signature Requirements in Agreed Divorces

Both parties must sign any proposed, agreed Final Order of Divorce or execute and submit a Marital Dissolution Agreement or Property Settlement Agreement.

[Adopted effective September 1, 2007.]

- 10.05 Attorney Fees.** In awarding attorney fees in domestic relations cases, the Court shall consider, in addition to the factors set forth in Rule 1.5 of the Rules of Professional Conduct and any other appropriate authority, the attorney's contract with the client, the financial resources of the parties, and the good-faith efforts of the parties to resolve the case consistent with existing law.

[Adopted effective September 1, 2007.]

- 10.06 Family Law Mediation.** (Effective 2009 MAR 01.) Counsel shall comply with all statutes regarding mediation in divorce cases including, but not limited to, those involving assets, liabilities, alimony, and parenting plans. Both parties shall make a good faith effort to exchange at least one day prior to mediation, and no later than the date of mediation, asset and liability statements, income and expense statements, proposed division of assets and liabilities, and proposed parenting plans with supporting documentation. Pursuant to the applicable mediation statutes, these documents shall not be admissible in court and shall be used for settlement negotiation purposes only. These documents shall contain a statement to that effect.

[Adopted effective March 1, 2009.]

Comment The addition of this rule will facilitate the exchange of pertinent information before or at the mediation, which will enhance the likelihood of success at the mediation.

RULE 11. FUNDS

- 11.01 Funds Paid Into Court.** (a) No litigant funds shall be paid into Court without the Court's order pursuant to Tenn. Code Ann. §18-5-106. Funds paid into court are not invested for the benefit of the litigants unless the Court so directs.
- (b) All orders directing investment of funds shall contain the full legal name and address of each person or entity to whom the funds belong. Orders pertaining to minors shall state the dates of the minor's birth and majority. Social security and taxpayer identification numbers may be requested by the Court for administrative purposes. Such numbers, if requested, shall not be part of the public record.
- (c) It is the duty of the attorney or litigant seeking investment of funds to call to alert the Clerk that the funds are to be invested.

[Adopted effective September 1, 2007.]

- 11.02 Funds Paid Out of Court.** Before funds will be released by the Clerk, social security or taxpayer identification number must be furnished by the recipient to the Clerk, and a receipt or ledger for the funds must be signed.

[Adopted effective September 1, 2007.]

RULE 12. MASTERS

- 12.01 Duty of Counsel.** At the time a case is set for trial, counsel shall inform the Court of any issues which may be the proper subject of reference to a Master, such as accounting, damages, and validity and priority of liens.

[Adopted effective September 1, 2007.]

- 12.02 Notice of Hearing.** Following the entry of an Order of Reference, the Master will notify all parties involved of a hearing date to take proof on the matter referred. The Master, if necessary, may schedule a meeting with counsel in order to determine the procedure on the reference.

[Adopted effective September 1, 2007.]

- 12.03 Continuances.** Hearings will only be continued by leave of the Master for good cause, which shall be brought to the attention of the Master as soon as practicable before the hearing date. The absence of a witness shall not be grounds for a continuance unless the witness has been subpoenaed in accordance with Rule 45 of the Tennessee Rules of Civil

Procedure. Requests for continuances shall be made by telephone conference call involving all interested parties.

[Adopted effective September 1, 2007.]

12.04 Evidence Exchange.

At least ten (10) days before the hearing, the parties shall exchange exhibits upon which they wish to rely at the hearing.

[Adopted effective September 1, 2007.]

12.05 Court Reporter or Stipulation. The parties shall either i) stipulate in writing prior to the hearing that the Master's findings of fact shall be final or ii) employ a court reporter to attend the hearing and prepare a transcript of the proceeding. This transcript shall be filed with the Clerk for preparation of the Master's Report and filing pursuant to Rule 53.04(1) of the Tennessee Rules of Civil Procedure.

[Adopted effective September 1, 2007.]

12.06 Objections to Master's Report. (a) Application to the Court for action upon a Master's Report or upon objections thereto shall be made by motion within ten (10) business days of the service of the Master's Report. (b) Objections shall be supported by a transcript of proceedings before the Master and shall state specifically the grounds for the objections by specific references to the transcript, except in matters stipulated pursuant to LRCP 12.05.

(c) If no motion for action upon a Master's Report is made within the prescribed period, the Master's Report shall become final and the Court without further action of the parties may enter an order of confirmation.

(d) Orders prepared by counsel, which confirm a Master's Report, shall be in proper form, embodying the recommended findings or awards in the report, such that the order shall stand alone without necessary reference to the report.

[Adopted effective September 1, 2007.]

RULE 13. ADOPTIONS

13.01 Surrenders. (a) Surrenders may usually be scheduled as *ex parte* matters. (b) In Chancery Court all surrender documents shall be reviewed by the Clerk's office before the surrender occurs. (c) Counsel shall inform the Court's secretary if more than one child is the subject of surrender or circumstances exist that will require an unusually lengthy hearing. (d) There shall be a separate surrender for each child.

[Adopted effective September 1, 2007.]

13.02 Petitions for Adoption. A separate verified petition must be filed for each adoptive child. Separate docket numbers shall be assigned to each petition, and there shall be a separate final order in each case. Cases involving the same petitioner shall be assigned to the same Judge.

[Adopted effective September 1, 2007.]

13.03 Waivers. The law allows the Court to waive certain procedures and time requirements in appropriate circumstances. Counsel or parties may not assume that the Court will routinely waive such procedures or requirements. Anyone seeking waiver shall, in a motion or proposed order, cite the statutory authority thereof and state the circumstances justifying relief.

[Adopted effective September 1, 2007.]

13.04 Adoptions - Final Hearings – Minors. (a) In an adoption by relatives or a step-parent, the Court usually waives or shortens the six-month waiting period after filing if the child has lived in the home for more than one (1) year. (b) In other adoptions, the Court is unlikely to waive or reduce in the six-month waiting period after filing the petition unless the child has lived in the home for more than one (1) year and there are compelling reasons. (c) In no event is a final hearing to be scheduled less than ten (10) days after the petition is filed. (d) The child and the parents shall appear before the Court for the final hearing unless specifically excused by the Court. Appropriate dress is required.

[Adopted effective September 1, 2007.]

13.05 Terminations. If a proposed termination is contested or either natural parent is incarcerated, counsel shall so advise the Court. Parents whose rights are subject to termination may be eligible for an appointed attorney. Lawsuits to terminate parental rights shall be concluded before the adoption is set.

[Adopted effective September 1, 2007.]

13.06 Final Report on Adoption. The final report in response to the Court's Order of Reference shall be filed at least three (3) days before the final hearing. The purpose of the Court's Order of Reference is to bring the status of the prospective adoptive home and the child up to date immediately prior to finalization of the adoption.

[Adopted effective September 1, 2007.]

RULE 14. GIFTS AND GRATUITIES

14.01 Court Officers and Deputy Sheriffs. No attorney or party shall offer, nor shall any court officer or deputy sheriff

accept, **any money or other thing of value for acting within the scope of one's duties.**

[Adopted effective September 1, 2007.]

- 14.02 Clerks.** No attorney, litigant, bank, title insurance company, or any other person regularly doing business in or with the office of the Clerk shall offer, nor shall any clerk receive, any gifts, money, or other thing of value, except the fees, taxes, and costs authorized by statute, rule, or order.

[Adopted effective September 1, 2007.]

RULE 15. JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS – SPECIAL PROCEDURES

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

[Adopted effective September 1, 2007.]

- 15.02 Filing and Service of Briefs.** The petitioner must file and serve a brief within thirty (30) days after the record is filed. The defendant must file and serve a brief within thirty (30) days after service of the brief of the petitioner. Reply briefs may be filed at the option of a party and must be filed and served within fourteen (14) days after service of the preceding brief. Upon motion of a party or upon its own motion, the Court may enlarge or shorten the time for filing briefs.

[Adopted effective September 1, 2007.]

- 15.03 Hearings - Oral Argument.** Hearings on oral argument shall be scheduled as provided in LRCP 7.02 after the record has been filed.

[Adopted effective September 1, 2007.]

- 15.04 Waiver of Oral Argument.** Oral argument may be waived by agreement of counsel. If oral argument is waived, counsel shall notify in writing the Chancellor's office after all briefs are filed.

[Adopted effective September 1, 2007.]

RULE 16. GUARDIANSHIP AND CONSERVATORSHIP

- 16.01 Petitions.** A separate petition must be filed for each respondent. Separate docket numbers shall be assigned to each petition, and there shall be a separate Final Order in each case.

[Adopted effective September 1, 2007.]

- 16.02 Conservatorships.** The petition shall be verified and shall contain the information required by statute and these rules. Petitioner shall list the names and addresses of all persons to whom notice is required. Notice shall be given by the Clerk. Service of process shall be accomplished by an authorized officer. A verified statement for a physician or psychologist in accordance with Tenn. Code Ann. § 34-3-105 shall be filed, if available, with the petition or, if not then available, before or at the hearing.

[Adopted effective September 1, 2007.]

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

[Adopted effective September 1, 2007.]

- 16.04 Submission of Orders with Petition.** Orders appointing or waiving a guardian *ad litem*, setting a hearing date, and providing for the duties of the guardian *ad litem* shall be submitted with each petition for conservatorship or guardianship. Examples of such orders may be obtained from the Clerk's office.

[Adopted effective September 1, 2007.]

- 16.05 Guardian ad litem.** (a) The Court will usually appoint a licensed attorney as the Guardian *ad litem* upon the filing of a petition to appoint a conservator or guardian. The Court may, however, waive the appointment of a Guardian *ad litem* for good cause in accordance with Tenn. Code Ann. § 34-1-107.

(b) The Court may appoint a Guardian *ad litem* in matters involving the following: the sale, improvement, or mortgage of any real property in which a minor or other person under disability has an interest, the sale or disposition of a ward's personal property, possible impropriety by a fiduciary, or unauthorized encroachments or questionable management of a ward's assets under guardianships or conservatorships. The Court may also do so any time it believes such an appointment is in the best interest of a minor, incompetent, absentee, or interested party or necessary to further the administration of justice.

(c) The Guardian *ad litem* shall conduct an inquiry and file a report with the Court at least three (3) days before the hearing. The report shall contain the information required by statute and these rules and such additional information as the Court may require or the Guardian *ad litem* deems necessary. Reports shall be brief and to the point unless the complexities of the case require greater detail.

[Adopted effective September 1, 2007.]

- 16.06 Orders of Appointment.** All orders appointing a guardian or conservator shall contain the information required by appropriate statute and these rules, including the ward's full name and date of birth. The order shall also require or, with the requirement of an annual report, waive an inventory and property management plan within sixty (60) days and an annual accounting. Where required, bonds must be executed prior to the issuance of letters by the Clerk. Forms that provide for most of the requirements can be obtained from the Clerk's office but must be modified to meet the facts of each individual case. Orders appointing a representative shall adjudge the Clerk's cost.

[Adopted effective September 1, 2007.]

- 16.07 Subsequent Orders.** (a) Unless other matters are pending, orders approving accounting, sale of real estate, or similar matters shall include provisions closing the matter pending further proceedings and assessing costs.
(b) If an annual accounting is not required, an Annual Report shall be required each year and the Clerk shall send notice when the Annual Report is due. The Annual Report shall contain information as to the condition and location of the ward as well as other information as may be requested by the Clerk, such as the identity and relation, if any, of the caregiver to the ward, and required by law.

[Adopted effective September 1, 2007.]

RULE 17. PROBATE

- 17.01 Hours.** The daily session of the Probate Division of Part 2 shall be from 9:00 to 10:00 a.m. All other times shall be by appointment only.

[Adopted effective September 1, 2007.]

- 17.02 Interested Parties.** (a) Interested parties include a spouse, beneficiary, legatee, devisee, fiduciary, heirs, and income and remainder beneficiaries of a trust.
(b) Notice and service of process is not required for an interested party who joins in a petition as a petitioner or who files a sworn waiver or consent.

[Adopted effective September 1, 2007.]

- 17.03 Petitions.** (a) A verified petition to probate a will, codicil, or other testamentary instrument or administer an intestate estate shall set forth such information as is required by statute and these rules. This information shall include the names, addresses, relationships of all legatees and devisees under the testamentary instruments, and the names of the surviving spouse and next of kin.
(b) Notice of petitions for elective share, year's support, homestead and exempt property shall be given to the personal representative of the estate, attorneys of record, and all interested parties, including creditors if the estate may be insolvent. If the personal representative is the surviving spouse, an administrator *ad litem* shall be appointed.

[Adopted effective September 1, 2007.]

- 17.04 Common Form Probate.** Petitions for probate in common form may be heard by the Court or the Clerk. Petitioner shall give notice to all interested parties before the hearing of the petition.

[Adopted effective September 1, 2007.]

- 17.05 Solemn Form Probate.** Petitions for probate in solemn form shall be heard by the Court, after service of notice required by statute, at a time and date set by the Court.

[Adopted effective September 1, 2007.]

- 17.06 Holographic Wills.** In holographic will proceedings, the testimony of two (2) witnesses concerning the handwriting of the decedent shall be taken in person, except, for good cause, one such witness may give an affidavit or deposition. Testimony as to testamentary intent shall be in person.

[Adopted effective September 1, 2007.]

- 17.07 Small Estates.** Estates coming within the provisions of the Small Estates Act may be heard by the Clerk or the Court. Bond shall be required in all small estates.

[Adopted effective September 1, 2007.]

- 17.08 Claims.** Verified claims must be filed with the Clerk in triplicate with any required supporting documents as provided by statute. The Clerk may decline to accept claims submitted without the statutory fee.

[Adopted effective September 1, 2007.]

- 17.09 Authority of Master.** (a) Unless otherwise ordered by the Court, the Clerk and Master is authorized to act without a specific order of reference as follows:

- ¹⁾ hear applications for letters testamentary and of administration
- ²⁾ adjudicate probate claims and exceptions thereto
- ³⁾ determine year's allowance to surviving spouse and minor children
- ⁴⁾ preside over assignment of homestead
- ⁵⁾ determine elective share of surviving spouse
- ⁶⁾ take and state all accounts and settlements

- (b) The Clerk and Master shall file a written report of findings and actions on the above matters.
- (c) Rule 53 of the Tennessee Rules of Civil Procedure and LRCP 12 shall govern the procedures for master’s hearings and exceptions to or confirmations of Master’s Reports

[Adopted effective September 1, 2007.]

- 17.10 Inventories and Accountings.** (a) Inventories and accountings may be waived (i) if the Will so provides or (ii) if all of the residuary beneficiaries or legatees file waivers excusing the personal representative from the requirement. If a residuary beneficiary is under a disability or the estate is insolvent, a final accounting cannot be waived. A Sworn Statement in Lieu of Final Accounting is required even if accountings are waived.
- (b) Sworn Statements in Lieu of Final Accounting shall comply with all the requirements of the statutes and shall state the gross taxable value of the estate. Approval of personal representative fees and attorney fees may be included in the Sworn Statement.
- (c) Notice of the filing and taking of an accounting must be as provided by law.
- (d) The final accounting shall bear a certificate of the personal representative that the estate has been distributed in accordance with the instrument admitted to probate, or, in intestate cases, in accordance with the laws of descent and distribution.
- (e) Upon failure to file accountings within the time required by law, the Court may revoke letters issued to a personal representative and appoint the Public Administrator or a successor personal representative.
- (f) If an estate is not closed within two (2) years from the date of qualification of the personal representative, additional time to file accountings will be granted only upon motion and notice to interested parties.

[Adopted effective September 1, 2007.]

- 17.11 Summary Removal and Sanctions.** Failure to comply with statutory requirements or orders of the Court shall constitute grounds for summary removal of the personal representative. In addition, the Court may impose sanctions, such as forfeiture of earned fees and taxation of fees and costs against the defaulting party.

[Adopted effective September 1, 2007.]

- 17.12 Fees and Expenses.** (a) Court approval of legal fees and expenses is required in all circumstances unless: (i) they are approved in writing by all interested parties or their legal guardians and (ii) they do not exceed the percentages of the estate value set out in one of the following schedules, which are presumed reasonable in the absence of objection:

<u>Gross Estate</u>	<u>Schedule 1</u>	<u>Schedule 2</u>	<u>Schedule 3</u>
1 st 20,000	5%	2.5%	1.25%
next 80,000	4%	2.0%	1.0%
next 150,000	3%	1.5%	0.75%
next 500,000	2%	1.0%	0.5%
over 750,000	1%	0.5%	0.25%

“Gross estate” for this purpose is the gross estate for inheritance tax purposes.

- (b) Legal Fees and Expenses:
- ¹⁾ apply Schedule 1 if the personal representative is not regularly engaged in the business of administering estates or
 - ²⁾ apply Schedule 2 if the personal representative is regularly engaged in the business of administering estates.
- (c) Personal Representative Fees and Expenses:
- ¹⁾ apply Schedule 1 if the personal representative is regularly engaged in the business of administering estates or
 - ²⁾ apply Schedule 3 if the personal representative is not regularly engaged in the business of administering estates.
- (d) If fees and expenses have not been properly approved as required by this rule or if objections are filed by motion, the Clerk shall, on reference, determine a reasonable fee and report such to the Court.

[Adopted effective September 1, 2007.]

RULE 18. SALE OF REAL PROPERTY

- 18.01 Property Description.** Complaints seeking a sale by partition, general lienor’s suits, and all other actions to sell real property shall set forth the complete legal description and the street name and number of the property.

[Adopted effective September 1, 2007.]

- 18.02 Orders Authorizing Sale.** Unless otherwise specifically directed by the Court, all orders for the sale of property shall:
- (a) state that the sale will be held on the western side of the Hamilton County Courthouse by public outcry to the highest bidder for cash, and
 - (b) include the following information: ¹⁾ map-parcel-group number, ²⁾ street address or, with a statement that no street address is available, designation of the nearest intersection of public streets or roads, and ³⁾ complete legal description of the property.

[Adopted effective September 1, 2007.]

- 18.03 Advertisements.** The Clerk, in advertising the sale of real property, shall set out the street address, if available, as well as the description as set forth in LRCP 18.02(b).

[Adopted effective September 1, 2007.]

- 18.04 Orders Confirming Sale.** Unless otherwise specifically directed by the Court, all orders confirming the sale of property shall: (a) attach as an exhibit expressly incorporated in the order by reference the property description required by LRCP 18.02(b);

- (b) contain the address of each grantee
- (c) contain the name and address for the mailing of tax bills
- (d) direct the Clerk to make the following disbursements, where applicable: ¹⁾appraisal fees ²⁾attorney fees ³⁾brokerage fees ⁴⁾claims or encumbrances such as mortgages, notes, and liens ⁵⁾closing costs ⁶⁾commissions on real estate ⁷⁾court costs ⁸⁾court reporter fees ⁹⁾deed preparation and filing ¹⁰⁾delinquent taxes ¹¹⁾guardian *ad litem* fees ¹²⁾property insurance prorated ¹³⁾recording fees ¹⁴⁾rents prorated to closing date ¹⁵⁾revenue stamps ¹⁶⁾survey fees ¹⁷⁾taxes prorated current to closing date ¹⁸⁾title insurance ordered and paid for and ¹⁹⁾balance of funds to listed recipients with their complete names, addresses, social security number, and percentage of balance of funds to each.

[Adopted effective September 1, 2007.]