

Third Judicial District of Tennessee

Circuit Court Local Rules of Practice
2021

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Of Tennessee
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RULE 1: RULES OF COURT: APPLICABILITY, SUSPENSION, AND DEFINITIONS

Section 1.01 Former Rules Abrogated

Effective August 31, 2021, all former rules of local practice, except as readopted herein, are abrogated.

Section 1.02 Applicability

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

Section 1.03 Suspension of Rules

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

Section 1.04 Definitions

The following definitions apply to terms used in these rules:

Clerk: The Circuit Court Clerks, or their designee(s)

Pro Se Party: Self-Represented Litigant

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

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

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

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

Rules of Evidence: Tennessee Rules of Evidence

T.C.A.: Tennessee Code Annotated

The Court — The Circuit Court, the Circuit Court Judges, and/or their designees

Section 1.05 Citation

These rules may be cited as "*Circuit Court Local Rules of Practice*, Section ____ "; and, if no particular section is being cited, cite as "*Circuit Court Local Rules of Practice*."

RULE 2: COURT SESSIONS

Section 2.01 Commencement of Court

Court sessions shall commence at 9:00 a.m. or at such time as the Court directs. **The Judge, attorneys, parties, and witnesses shall be prompt at all sessions.**

Section 2.02 Protocols for Courtroom Proceedings Via Zoom

A. Before Entering the Proceedings

1. Participants should check their equipment ahead of time to make sure their device is working properly.
2. All other electronic devices must be turned off prior to entering the proceeding.
3. A participant's full name should appear on the screen so that they may be identified by the Court.
4. Participants should frame themselves correctly on the video, with their face in the center of the screen. Always use the "Start Video" option so that everyone can see you.
5. Backgrounds should be appropriate and not offensive or distracting.
6. Participants are to dress appropriately, as if they were personally appearing in a formal court environment. No inappropriate clothing or hats. No smoking or eating. No spectators, children or pets should appear in the video. Keep all papers away from the microphone to avoid unnecessary noises.
7. **It would be beneficial for attorneys to have their clients present in their offices during the Court proceedings.** If a client must appear from another location, counsel should notify the Court prior to the hearing. Witnesses who are to review documents (or expert witnesses) should be sequestered at the attorney's office whenever possible.
8. Counsel shall review the Court's protocols with all participants prior to the hearing.
9. Counsel shall identify witnesses to the Court so that they may be sequestered in breakout rooms prior to the start of the hearing.

B. Appearance Before the Court

1. Please join the Court proceedings five minutes prior to your scheduled hearing time.
2. All participants must be in a space free from distractions and interruptions during the hearing.
3. Participants are not allowed to "Chat" or text during the proceeding, either on Zoom or another device.
4. To prevent unnecessary background noise, participants should "Mute" their microphones when not speaking.
5. Please do not speak over others. Attorneys should admonish their clients to refrain from speaking unless directed by counsel or the Court.
6. Once a participant is seated, they must avoid moving away from the camera or stopping their video feed.
7. Participants are not allowed to interrupt the proceedings and must avoid facial or hand gestures, or any other non-verbal actions that could be interpreted as disruptive to the speaker or trying to convey a message.
8. All participants must be admonished that the proceedings are formal, even though they may be in an informal setting such as their dining table. The penalties for perjury apply, as does the Court's ability to punish misconduct as contempt of court. They may only speak when called upon.

C. Testimony of Witnesses

1. The Court will administer the oath to all witnesses via the video proceeding.
2. Witnesses must be seated in an appropriate environment without distractions (no television/radio/electronic devices). Witnesses may not testify on a hand held device while driving or walking. No other persons may be present in the room where the witness is testifying.
3. When testifying, witnesses should look directly at the camera and should not have any other window or program open on their computer/telephone/laptop, etc. or have any other electronic devices in their possession.

4. Witnesses shall not have anything in their hands and may not refer to notes, papers, phones, computers, or anything else without the express permission of the Court.
5. Witnesses are not permitted to leave the proceeding until given permission by the Court.

D. Exhibits

1. Counsel shall e-mail exhibits *to all opposing parties and the Judge's Office* at least two days before the hearing.
2. Counsel shall identify each exhibit with a case name, number and exhibit number. (*i.e.* Jones, 21CV00, Exhibits 1-2)
3. If exhibits are not provided to the Court or to opposing parties as stated herein, the Court may exclude the exhibit and not consider it for any purpose.

THIS IS A VIRTUAL COURTROOM AND ALL PARTICIPANTS ARE TO BE RESPECTFUL AND CONDUCT THEMSELVES AS THEY WOULD IN A FORMAL COURTROOM.

RULE 3: APPEARANCE AND CONDUCT OF COUNSEL

Section 3.01 Counsel of Record; Entry of Appearance

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

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

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

Section 3.02 Withdrawal of Counsel

No attorney shall be allowed to withdraw except for good cause and by leave of Court upon motion after notice to all other counsel and/or *pro se* parties, and to the client of the attorney wishing to withdraw. The motion shall set forth the reason for withdrawing with specificity (**counsel should be aware of Tennessee Rules of Professional Conduct, Rule 1.6, regarding attorney client confidentiality**), the status of the case, and whether withdrawal will result in delay. The order allowing withdrawal shall bear a certificate of service reflecting that a copy of the order allowing withdrawal has been furnished both to the opposing attorney (or to the opposing party, if unrepresented by counsel) and upon the client of the attorney wishing to withdraw. Further, such order shall provide that the affected party has thirty (30) days to secure other counsel if the party so chooses, which counsel shall enter an appearance within that time or, failing therein, that it will be presumed that the client is electing to proceed *pro se*. The certificate of service on said order shall contain the full mailing address of the client-party or his place of employment or recite that such address is not known to the attorney.

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

Counsel who are surety for costs remain surety despite withdrawal until a successor surety is obtained or until the plaintiff posts a five hundred dollars (\$500) cash bond or corporate surety bond, unless the plaintiff is permitted to proceed under a pauper's oath. All orders of substitution of counsel shall not delay or prejudice the trial of the case.

Section 3.03 No Appearance Entered; Copies of Pleadings

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

Section 3.04 Conduct

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

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

(C) Refrain from Interruptions. Counsel should refrain from interrupting the Court or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect the client, and should respectfully await the completion of the Court's statement or opinion before undertaking to point out objectionable matters. When objection is made to a question asked, counsel should refrain from asking the witness another question until the Court has had the opportunity to rule upon the objection. Objecting counsel shall state the legal grounds without argument or discussion, except by leave of Court.

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

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

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

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

(H) Forbidden Items. There shall be no use of tobacco products in or near the courtroom or at the taking of a deposition. There shall be no food, beverages, or gum in the courtroom; however, water is permitted at counsel table. Cell phones and other electronic devices shall be silenced while in the courtroom. The use of cell phones is prohibited while in the courtroom. No video or audio recording may be made without leave of Court.

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

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

Section 3.05 Setting Attorney Fees

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

Section 3.06 Contacting the Judge

No counsel, party, or a witness to a pending or impending action shall contact the Judge, except as permitted by law. The litigants and witnesses should be instructed that under no circumstances shall they contact the Judge or the Judge's secretary, paralegal, or law clerk. However, approved orders, judgments,

etc., may be forwarded to the Judge for purposes of signature prior to entry. In the event *ex parte* correspondence is delivered to the Court, a notice of filing will be entered by the Court. “Any letters received by the Judge, whether received in chambers or in open court, should be filed in the cause and made a public record, permitting counsel for the respective parties to read the letters and the court to consider the letters when a party presents an issue predicated upon the letters”, pursuant to State v. Birge, 792 S.W.2d 723 (Tenn. Crim. App. 1990). See Tenn. Sup. Ct. R. 10, Cannon 2, note 1.

RULE 4: COURT FILES

No person, except the judge, clerk, or designee shall be allowed access to the filing cabinets, vaults, or other repositories where court records are kept. All papers and records of the Court shall be in the custody of the Clerk. **FILES MAY NOT BE WITHDRAWN BY ANY PERSON, OTHER THAN BY THE JUDGE, AT ANY TIME**, except by Order of the Court or written permission of the Clerk. In the event the Court file is needed out of county for a hearing, the Clerk shall arrange to have the Court file delivered to the Court, with five (5) day notice being provided to the Clerk by the requesting party and/or attorney. For good cause the Clerk may allow an attorney of record to withdraw material upon their giving the Clerk a written receipt describing in detail the material withdrawn and the date of withdrawal. Such material shall be returned to the Clerk within 2 days of trial in another county or 2 days before trial or hearing in county. Upon request, copies of the content of files shall be furnished by the Clerk at reasonable cost.

RULE 5: FILING AND SERVICE OF PAPERS

Section 5.01 Filing with the Clerk

All papers including pleadings, motions, proposed judgments, and orders shall be filed with or submitted to the Clerk. A copy of motions and briefs should be submitted to the Judge. Approved original orders, judgments, etc., may be delivered to the clerk or forwarded directly to the Judge for signature prior to entry, provided a pre-addressed, postage prepaid envelope is enclosed for forwarding of the same to the appropriate Clerk or attorney. Said Order or Judgment shall include the date of the hearing or trial and the Judge hearing the matter.

Section 5.02 Certificate of Service

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

Section 5.03 Filing of Discovery

Interrogatories, request for production, depositions, and other discovery material shall **not** be filed with the Clerk unless it is to be used and considered by the court for any purpose. Any such filing shall be at least 5 judicial days prior to hearing or trial, and notice of filing shall be given to opposing counsel prior to or immediately upon filing.

RULE 6: TRIAL CALENDAR

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

RULE 7: MOTIONS

Section 7.01 Time for Filing Pre-Trial Motions

Pre-trial motions, which may be dispositive of one or more issues in a case, shall be filed at least thirty (30) days prior to the date of a hearing on the motion. This thirty-day (30-day) requirement may be waived by the agreement of the parties, with the concurrence of the court. All motions shall be heard by the Judge assigned to the case at least ten (10) days before trial. Failure to obtain a motion hearing in a timely manner may be construed by the Court as an abandonment of the motion and the Court may refuse to consider same. See also Local Rule 7.05, *infra*.

Section 7.02 Briefs on Motions and Responses

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

Section 7.03 Oral Argument of Motions

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

Section 7.04 Time for Filing Responses to Motions

Responses to motions, including counter-affidavits, depositions, briefs, or any other matters being presented in opposition to motions must be filed and served on the movant no later than thirty (30) days after the filing of the motion. Unless the party responding to a motion secures an extension of time in which to file a response, if no response is filed within the aforesaid period, the court shall presume that no response is to be filed and the motion shall be considered unopposed.

Section 7.05 Docketing Motions for Oral Hearing

The court will designate a number of days each month as "motion days" and notify the Clerk. Motions requiring oral argument may be set for hearing on any of these days in any county by agreement of the parties and written confirmation to the Judge's office at least three (3) days prior to the motion date. If the parties cannot agree or a party will not cooperate, the moving party may schedule a motion by notice in accordance with the T.R.C.P.

Motions may be set on motion days at any time. Motions may also be scheduled and heard by conference call upon agreement of the parties and approval of the court. Motions may be heard in any county where court is in session except motions for default.

Section 7.06 Motions for *Pendente Lite* Relief

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

Section 7.07 Summary Judgment Motions

Motions for summary judgment shall be filed, pursuant to T.R.C.P. 56, and served at least forty-five (45) days before trial. The adverse party may serve and file opposing affidavits, pursuant to T.R.C.P. 56, not later than five (5) days before the hearing. Unless oral argument is requested, the Court may rule on the record. The moving party may notify the court that the file is in a posture for the court to rule.

Section 7.08 Motions *in Limine*

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

Section 7.09 Recusal Motions

Motions for recusal of a Judge shall be made in writing immediately upon discovery of a reason therefore so as not to delay the trial. Said Motion shall set forth the facts alleged that constitute cause for recusal.

Section 7.10 Motion to Compel Discovery

Motions to compel discovery shall be filed and served in accordance with the T.R.C.P. A copy of the motion and proposed original order shall be lodged with the Judge. Unless the opposing counsel files an objection to the discovery motion or motion for a protective order, etc., within fifteen (15) days of filing of the original motion to compel, the court may sign the proposed original order which may provide for sanctions and return it to the Clerk or the moving attorney.

Section 7.11 Drawing Order, After Motion Hearing

Counsel for the prevailing party, unless otherwise designated by the Court, shall prepare and submit, within fourteen (14) business days, an order reflecting the decision in every motion hearing.

Section 7.12 Failure to Appear

If the attorney or party filing the motion does not appear at a scheduled hearing on the motion or any other matter scheduled to be heard, the Court may strike, overrule, or otherwise dispose of the motion or other matter. In addition, the court may order sanctions, **including but not limited to**, attorney fees and other expenses incurred by reason of the motion.

RULE 8: NEGOTIATIONS AND SETTLEMENTS

Section 8.01 Award of Expenses

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

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

Section 8.02 Court Approval of Settlements

All joint petitions for approval of workers' compensation settlements, legitimation, and minors claims, as well as other settlements and statutorily allowed *ex parte* matters, may be presented to any Circuit Court Judge without regard to case assignment. (see Local Rule 2, *supra*). However, all such matters must be filed with the clerk and assigned to a judge before being presented for approval.

RULE 9: COURT REPORTERS AND INTERPRETERS

It is the responsibility of counsel to arrange for court reporters. Proceedings shall not be postponed or delayed because of a court reporter's absence or tardiness. A court reporter is required in termination of parental rights cases to ensure a complete record for proper appellate review. It is the responsibility of counsel to arrange for interpreters, approved by the Court; and the Court shall appoint an interpreter according to the preference listed below and pursuant to Tenn. Sup. Ct. Rules 41 and 42:

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

See, Local Rule 26, *infra*.

RULE 10: SCHEDULING PROCEDURE AND MEDIATION

Section 10.01 Case Assignment Procedure

Upon filing, every case will be assigned a specific judge by the clerk using random computer selection or other appropriate and fair methods.

Section 10.02 Judges' Annual Schedule

The Circuit Judges will publish an annual schedule of time available to each county. Copies may be obtained from the Clerk's office or the Judge's office. The Judges may schedule matters at other places and times provided proper courtrooms or facilities, including officers, are available.

Section 10.03 Mediation

Under the authority of Tennessee Supreme Court Rule 31, unless otherwise approved by the court upon motion of one or more parties, all eligible civil actions shall be submitted to mediation before setting for trial.

The parties may agree on any person to be a mediator. If the parties cannot agree on a mediator, a motion shall be made to the Court to appoint a “Rule 31 dispute resolution neutral.”

Section 10.04 Method of Setting

Cases shall be set for trial in any of the following ways:

(A) By agreement (highly preferred method)

The attorneys or litigants will agree on as many dates as possible consistent with the Judge’s annual schedule and fax or mail the same to the Judge’s office, setting out the style of the case and case number, along with a certificate of readiness and the estimated time required for trial. The Judge’s office will choose a date consistent with their schedule and notify the requesting attorney or litigants by fax or telephone. The requesting attorney or litigant will have ten (10) days to confirm the final setting by letter or fax to the judge and the clerk. The case will not be placed on the docket by the clerk without this confirmation.

(B) Without Agreement of Counsel

1. By motion and subsequent order

Any attorney or litigant may file a motion for scheduling order or motion to set a case for trial. Said motion may be heard by agreement by conference call or at any time before court convenes or on any regularly scheduled motion day by the judge assigned to the case. The case will be placed on the trial docket subsequent to order of the court, a copy of which shall be delivered to the judge’s office within ten (10) days and filed with the clerk as usual. Said order shall direct the clerk to set the matter for hearing or trial at a specific time, date and place.

2. By Certificate of Readiness

Attorney or litigant may fax or mail a request to set a case for trial to opposing counsel and the appropriate judge, along with all of their available dates and a Certificate of Readiness. Opposing counsel will then have ten (10) days from the date of mailing in which to file their available dates. The judge’s office will then choose a date when all parties are available and notify the parties of same. The requesting attorney will confirm this date by letter or fax to the judge’s office and clerk within ten (10) days.

If opposing counsel is not available on any date suggested by the requesting party, then they must so advise the judge’s office by affidavit within ten (10) days of mailing of the request to set and list dates they are available consistent with the Judge’s calendar. The judge’s office may then attempt to find other available dates or the requesting party may file a motion to set or for scheduling order.

If the opposing party fails to respond to the original request within ten (10) days of mailing, the Court may choose a date from the original request and notify counsel. The requesting attorney will then confirm the date by letter or fax directed to the Judge and the Clerk and the case will be placed on the Court’s docket by the Clerk.

3. By the Court upon Notice

If the judge finds that a case has laid dormant for an unreasonable time that it should be set for trial and no action is taken by the attorneys or litigants, the judge may send a notice of intent to set along with the court's available dates to the attorneys or parties. The attorneys will then have ten (10) days from the date of mailing or fax to agree on a date. The attorneys will then fax or mail the agreed date to the Judge. If the parties are not able to agree, they must provide the judge by letter or fax their available dates in the appropriate county consistent with the judge's published schedule. The judge will select a date consistent with the attorneys' and the judge's schedule and notify the attorneys and the clerk by letter or fax confirming the trial date. If the attorneys fail to respond, the judge may set a date and notify the parties and the clerk that the case is set, specifying the date or place, and the clerk shall place the matter on the court's docket. Alternately, the Judge may proceed pursuant to Rule 10.09.

4. By Docket Soundings

At their option, the judges may elect to sound a docket. In such event, the clerks will notify all attorneys having pending cases before the court, specifying the date, time, and place. Cases may then be set for trial whether or not attorneys attend.

5. Scheduling Motions

See Rule 7.05 Docketing Motions for Hearing.

Section 10.05 Time Estimation Given at Scheduling

When a case is to be set, a reasonable and realistic time estimation for the case to conclude shall be given by the attorney setting the case.

Section 10.06 Deadline for Trial Preparation

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

Section 10.07 Continuances

(A) Cases shall not be continued by agreement and shall be continued only by leave of the Court evidenced by a signed and entered order. Cases shall not be continued except for good cause which shall be brought to the attention of the assigned Judge as soon as practicable before the date of trial by motion or other appropriate means in case of emergencies. Continuances will not be granted liberally.

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

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

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

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

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

Section 10.08 Award of Fees and Expenses

In cases continued, the clerk shall tax appropriate cost. The Court may also award expenses and attorney's fees, where permitted by statute, including compensation to witnesses for lost income and/or travel expenses.

Section 10.09 Dismissal of Dormant Case

To expedite cases, the Court may take reasonable measures to purge the docket of old cases where the cases have been dormant without cause shown for an extended time. The Clerk may, upon finding that a case has laid dormant for an extended time, prepare a "Notice of Order of Dismissal" and submit the same to the Judge for approval. "Tenn. R. Civ. P. 41.02(1) does not explicitly require the trial court to give a plaintiff notice before dismissing a complaint for failure to prosecute." Hessmer v. Hessmer, 138 S.W.3d 901 (Tenn. Ct. App. 2003) The court may enter an order of dismissal. (see Section 10.04 (B) 3 supra)(see example, appendix A and B).

RULE 11: PRE-TRIAL PROCEDURE AND BRIEFS

Section 11.01 Disclosure Requirements; Briefs

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

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

(C) Pre-Trial Briefs. The use of pre-trial briefs is encouraged. If possible, same should be furnished to the Judge at his permanent office address at least twenty-four (24) hours in advance of the time of trial. Such briefs shall contain a cogent and orderly recitation of the facts expected to be proven, and a statement of the law (with appropriate citations) applicable to such facts. Arguments in such briefs regarding factual

matters are inappropriate and shall be avoided. Copies of such pre-trial briefs shall be furnished to all opposing counsel or parties simultaneously with the furnishing of the original to the Judge.

(D) Pretrial Conferences. Pretrial conferences may be held pursuant to T.R.C.P. 16 in appropriate cases. Such conferences may be held upon application of any party or by court order. An order reflecting the action taken at the pretrial conference shall be prepared by counsel. See Appendix C for suggested form. See also Local Rule 10.04, *supra*.

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

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

(G) Written Discovery.

1. Requests for Written Discovery. A party invoking T.R.C.P. 31, 33, or 36 shall number each question or proposed admission and leave a blank space reasonably calculated to enable the responding person to have his/her response typed in the space provided. A party invoking T.R.C.P. 33 or 36 shall be limited to a total of thirty (30) interrogatories, including sub-parts, as well as limited to the same number of requests for admissions, including sub-parts. Interrogatories and requests for admissions shall be made in separate documents. See Rule 5.03, *supra*.

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

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

RULE 12: EXHIBITS

Section 12.01 Custody of the Clerk

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

Section 12.02 Disposition of Exhibits/Depositions

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

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

Section 13.01 Special Verdicts, Jury Interrogatories, and Requested Instructions

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

Section 13.02 Requests for Special Instructions

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

Section 13.03 Special Verdicts

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

Section 13.04 Written Findings and Conclusions

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

RULE 14: ORDERS AND JUDGMENTS

Section 14.01 Preparation and Submission of Orders and Judgments

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

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

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

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

Section 14.02 Preparation and Submission of Orders and Judgments: Alternate Method

In the alternative, counsel for the prevailing party shall prepare such Order or Judgment and lodge same with the Clerk within three (3) days of the Court's ruling. A copy of the Order or Judgment shall be served upon all opposing counsel and shall bear a proper certificate of service, as provided in T.R.C.P. 58.02. If opposing counsel objects to the proposed Order or Judgment, he/she shall so advise the Clerk, in writing, within five (5) days of his/her receipt of such copy, and proceed in accordance with Rule 14.03.

Section 14.03 Disagreements Over Contents of Orders and Judgments

In the event of a dispute concerning the content or wording of an Order or Judgment, each party shall lodge with the Clerk a proposed Order or Judgment within fourteen (14) days of the Court's ruling, and each Order or Judgment shall contain a proper certificate of service certifying that a copy of the proposed Order or Judgment has been served upon opposing counsel pursuant to T.R.C.P. 58.02. The parties shall point out to the Court the specific provision(s) in the competing versions of the Order or Judgment about which there is a disagreement and attach the pertinent portion of the transcription or record if a verbatim recording was made. The parties upon motion, or on its own motion, the Court may set a hearing to resolve such disputes.

Section 14.04 Court Costs

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

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

Section 14.05 Non-Minute Entry Orders

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

Section 14.06 Payment and Satisfaction of Judgments

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

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

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

Section 14.07 Non-Party Reference

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

Section 14.08 Reservation by Order

All orders which reserve some matter for final disposition shall state with particularity what is being reserved; and counsel shall cause the matter to be set for remaining disposition as soon as practical consistent with these rules. See Rule 7 and Rule 10 *supra*.

Section 14.09 Appointments

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

Section 14.10 Entry of Orders and Judgments

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

RULE 15: SPECIAL PROCEDURES FOR DIVORCES

See also Local Rules 21, 22, and 24.

Section 15.01 Uncontested Divorce Cases

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

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

Section 15.02 Contested Divorce Cases; Financial Information

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

In all contested divorce cases, the parties and their attorneys shall meet and cause to be prepared a joint, and single, statement of assets and liabilities using form Appendix F, G, and H attached which shall include a listing and description of all real property owned by the parties, or by either of them (including date acquired, and identity of all owners); any encumbrances against said real properties (including

identity of mortgagees, amount of monthly payments, and outstanding balances owing thereon); a general description of all personal properties owned by the parties, or by either of them, including estimated value of same and any encumbrances against same (including identity of mortgagees and full description of encumbrances); a full description of all debts of either party, including identity of creditors, amount of any monthly payments, and balance of debt owed; and the income of both parties, including the identity of the employer and the nature of the employment.

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

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

Section 15.03 *Pendente Lite* Hearings, For Spousal Support Only

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

In any action requesting spousal support *pendente lite*, and child support is NOT at issue, oral testimony by witnesses in support of or in opposition to a request for *pendente lite* relief shall not be allowed except by leave of Court, nor shall there be oral argument on any motion for *pendente lite* relief except by leave of Court. The party requesting *pendente lite* relief shall submit affidavits in support of his/her request, which affidavits shall state with particularity the incomes and expenses of the parties, the amount of temporary support requested, and any other information pertinent to the requested relief. All such affidavits shall be served upon the opposing party or his/her attorney along with a summons conspicuously referring to Local Rule 15.04 or pursuant to T.R.C.P. 58. Said certificate shall refer to this Local Rule 15.04 which advises the opposing attorney that he/she has thirty (30) days within which to file affidavits in opposition to the request for *pendente lite* relief. Failing therein, the Judge will enter an order based upon the affidavits of the movant alone. The opposing party may serve upon movant's attorney (or movant personally, if unrepresented by an attorney) affidavits in opposition to the request, which affidavits will state the respective incomes and expenses of the parties, any reason why the amount requested by movant is unreasonable, and any other information pertinent to the issue. If such opposing affidavits are not filed, the Court will proceed to consider the matter on the basis of the movant's affidavits alone.

Requests for *pendente lite* relief, and affidavits in support thereof, may be forwarded directly to the Judge after the time has expired for the filing of any opposing affidavits. If affidavits in opposition to requested relief have been filed, it shall be the responsibility of movant to forward such opposing affidavits, along with the supporting affidavits to the Judge. No application for *pendente lite* relief that has been forwarded

directly to the Judge will be acted upon unless all opposing affidavits and pleadings have been included in the mailing or movant certifies by letter that the time has expired for the filing of a response and that no such response has been made by the opposing party.

Section 15.04 Restraining Order to Vacate Residence

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

Section 15.05 Proof of Grounds for Divorce

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

Section 15.06 Minor Child Witness in Custody Hearing

It is recommended that minor children who are called to testify in a custody hearing remain in school and/or in their usual and customary environment, maintaining a normal schedule if possible, and called to testify without delaying the proceedings in court.

RULE 16: SPECIAL PROCEDURES FOR ADOPTIONS OR SURRENDERS

Section 16.01 Requirements for Setting Adoption Cases

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

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

Section 16.02 Attendance of Adoptive Child

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

Section 16.03 Setting of Adoption Hearing

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

Section 16.04 Adoption Surrenders

Surrenders are normally scheduled as *ex parte* matters, and surrender forms shall be filled out before same are presented to the Judge.

Section 16.05 Confidentiality of Records

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

RULE 17: SPECIAL PROCEDURES FOR EXTRAORDINARY INTERLOCUTORY RELIEF

Section 17.01 Assignment of Cases

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

Section 17.02 Restraining Orders

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

Section 17.03 Setting Hearing for Interlocutory Relief

Hearings on applications for temporary injunctions and other forms of extraordinary interlocutory relief shall be set on motion days or as provided in Rule 10, or in cases where no restraining order is issued, (1) upon notice after consultation with the Court or (2) by an order setting the date, time, and location for the hearing.

Section 17.04 Hearings for Interlocutory Relief

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

RULE 18: JURY TRIALS

Section 18.01 Procedure

When a case is to be tried to a jury, the words "JURY DEMAND" shall be typewritten in capital letters on the first page of the pleadings opposite the style of the case above the space for the case number, and counsel shall call that fact to the attention of the Clerk when the case is filed.

Section 18.02 Number of Jurors

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

RULE 19: CLERK SALES

Section 19.01 Sales to be Conducted by Clerk

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

Section 19.02 Advanced Bids

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

Section 19.03 Costs of Sale

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

Section 19.04 Failure to Finalize Sale

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

RULE 20: REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH DISABILITIES

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

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

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

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

acquisition, or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites.

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

The following process for requesting accommodations is established:

1. Applications requesting accommodations pursuant to this rule may be presented *ex parte* in writing on a form approved by and provided by the Court, or orally as the Court may allow. Applications should be made at the designated office of the Clerk where the proceeding will take place or to the judicial officer who will preside over the proceeding.
2. Applications for accommodations shall include a description of the accommodation sought along with a statement of the impairment that necessitates such accommodation. The Court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.
3. Applications should be made as far in advance of the requested accommodation's implementation date as possible, and in any event should be made no less than five (5) court days prior to the requested implementation date. The Court may, in its discretion, waive this requirement.
4. Upon request, the Court shall place under seal the identity of the applicant as designated on the application form and all other identifying information provided to the Court pursuant to the application.
5. An applicant may make an *ex parte* communication with the Court; such communications shall deal only with the accommodations the applicant's disability requires and shall not deal in any manner with the subject matter or merits of the proceeding before the Court.
6. In determining whether to grant an accommodation and what accommodation to grant, the Court shall consider, but is not limited by, the provisions of the Americans with Disabilities Act of 1990 and related state and federal laws.
7. The Court shall inform the applicant in writing of findings of fact and orders, as may be appropriate, that the request for accommodation is granted or denied, in whole or in part, and the nature of the accommodation(s) to be provided, if any.
8. An application may be denied only if the Court finds that:
 - (1) The applicant has failed to satisfy the requirements of this rule; or
 - (2) The requested accommodation(s) would create an undue financial or administrative burden on the court; or
 - (3) The requested accommodation(s) would fundamentally alter the nature of the service, program, or activity.

An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by a presiding judge or any other judicial officer of a court

within ten (10) days of the date of notice of denial or grant by filing a petition for extraordinary relief in a court of superior jurisdiction.

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

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

RULE 21: PARENTING PLAN (T.C.A. 36-6-401, *et seq.*)

Section 21.01 General Provisions

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

Section 21.02 Parenting Plans

Parenting Plans shall be prepared using the standard form.

Section 21.03 Duties of Attorneys

Attorneys representing parents in divorce proceedings involving minor children shall:

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

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

Section 21.04 Procedure for Determining Temporary Parenting Plan

- (A) Upon filing the complaint for a divorce involving minor children, the plaintiff shall also file one of the following three “papers”:
1. an agreed Temporary Parenting Plan (TPP) (highly preferred by the court)
 2. a Proposed Temporary Parenting Plan (PTPP) must be accompanied with a verified statement that the plan is proposed in good faith and is in the best interest of the child.
 3. an Affidavit of No Visitation for any of the reasons set forth in T.C.A. 36-6-406, along with a notice to the defendant to appear at a date scheduled by the Judge’s office to whom the case is assigned, or on regularly scheduled motion day for a hearing to determine whether any visitation should take place and in what form.

If the Court finds that a parent has made any false or misleading statement in the verified statement or failed to disclose any pertinent fact, the Court may take appropriate action, including but not limited to, prosecution for perjury, civil or criminal contempt of court, and/or taxing attorney’s fees and/or court costs. The Court may also find that such improper statements or nondisclosures weigh in favor of the opposite parent for purposes of the permanent parenting plan.

- (B) If the Court finds that the proposed temporary parenting plan appears to be reasonable, it will be adopted as the temporary order of the Court and will continue in effect until further order of the Court.
- (C) If the defendant disagrees with the temporary parenting plan, he or she may request that the parties be scheduled for the earliest preliminary mediation session, which will be followed by mediation as soon as practical afterwards.
- (D) All parents, regardless of whether they have a temporary parenting plan or not, are required to attend a parent education seminar.
- (E) Pursuant to T.C.A. 36-6-403(2), the proposed Temporary Parenting Plan shall be accompanied by a verified statement that the Plan is proposed in good faith and is in the best interest of the child. This verified statement shall specify the name and address of the caregiver for the child, as well as with whom the child has primarily resided during the six-month period immediately preceding the filing of the complaint/petition. If the proposed temporary parenting plan serves to change the parenting schedule existing during the prior six-month period, the verified statement shall so state.
- (F) The proposed Temporary Parenting Plan must identify the child support obligor and the amount of the child support obligation to be paid *pendente lite*.

Section 21.05 Modification of Previous Permanent Parenting Plan

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

Section 21.06 Parent Education Seminar

- (A) In actions for absolute divorce, divorce from bed and board (legal separation), annulment, or separate maintenance and in post-judgment modification proceedings involving minor children, where the allocation of parenting responsibilities and/or the establishment of schedules are in dispute, both parents shall attend a parent education seminar.
- (B) The Education Committee consisting of the trial court judges and chancellor of the 3rd Judicial District will receive and act upon applications from providers who seek approval to provide parent education seminars. A list of approved providers will be furnished to the clerks to be included in the package.
- (C) The Education Providers will make all arrangements for time, place, and fees for seminars to be conducted in no less than two-hour blocks. Seminar schedules for each provider will be provided to the clerk to be made available to parents and attorneys.
- (D) Education Providers will notify the courts by filing with the appropriate clerk a copy of a certificate of attendance given to parents attending the classes. Certificates shall include the following: Name; Social Security numbers; docket number; name of education provider; date class was attended; and shall be signed by a representative from the seminar facilitator.
- (E) The fee or costs of the parenting education seminars shall be borne by the parties. Fees may be reduced or waived for indigent persons. The Educational Provider will be expected to provide an appropriate number of pro bono slots for indigent persons.

Section 21.07 Permanent Parenting Plan

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

Section 21.08 Mediation and Mediators

(A) Alternative Dispute Resolution:

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

(B) Mediation Assignment:

If the Court is involved, either by the Court's own motion or by motion of one or both parties, a family mediator will be appointed pursuant to Supreme Court Rule 31. A Rule 31 Family Mediator will be appointed by court order, **OR** a referral to mediation is ordered by the Court, **OR** a referral to pro bono mediation is ordered by the Court.

(C) Mediation Fees and Agreement to Mediate:

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

(D) Invoicing Procedures:

- a. If the Court has ordered that mediator fees are to be taxed as court costs, the invoice must be submitted with the original final report to the clerk's office.
- b. It is the mediator's responsibility to notify the clerk's office that an invoice is included in the final report.
- c. The invoice should include a docket number to ensure correct filing and payment.

(E) Mediator Reports:

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

(F) Judicial Settlement Conferences:

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

Section 21.09 Scope of Rule

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

Section 21.10 Uncontested Divorce

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

Section 21.11 Waiver

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

RULE 22: RESTRAINING ORDERS IN DOMESTIC RELATIONS CASES

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

Section 22.01 Required Contents of Mutual Restraining Order

The parties are mutually restrained and enjoined from:

1. Transferring, assigning, borrowing against, concealing, or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any property. *Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.*
2. Voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for nonpayment of premiums, any insurance policy, including but not limited to life, health, disability, homeowners, renters, and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries without the consent of the other party or an order of the court. “Modifying” includes any change in beneficiary status.
3. Harassing, threatening, assaulting, or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party’s employer.
4. Removing any children of the parties from the State of Tennessee without the permission of the other or an order of the court. The provisions of Section 36-6-101(a)(3) shall be applicable on fulfillment of the requirements of this Rule. The Mutual Restraining Order shall be attached to the summons and the complaint and shall be served with the complaint. **The directives shall become an order of the court**

upon fulfillment of the requirements of this Local Rule. However, nothing in this rule shall preclude either party from applying to the court for further temporary orders, an expanded temporary restraining order, or modification or revocation of this temporary injunction.

5. The Restraining Order shall also contain the following language:

VIOLATION OF A RESTRAINING ORDER MAY RESULT IN A FINE UP TO \$50.00 AND/OR UP TO TEN (10) DAYS IN JAIL FOR EACH VIOLATION. The Restraining Order shall bear the signatures of the Plaintiff, Plaintiff's counsel, and the Judge/Chancellor.

Section 22.02 Responsibility of Petitioner or Petitioner's Attorney

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

RULE 23: INSTRUCTING CLERK TO INVEST FUNDS

The Clerk shall invest funds in interest bearing accounts only when there is a specific Order directing the Clerk to do so. Such orders should suggest the period of time the funds should be invested, as well as state the name of the financial institution in which the funds are to be invested and the specific type of account to be utilized. All such orders shall contain the full legal name, address and Social Security number or Employer Identification number of the person/entity whose funds are being invested. If the funds are those of a minor, the Order shall recite the minor's date of birth.

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

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

RULE 24: CONTEMPT FILINGS OR PROCEEDINGS

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

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

RULE 25: DISTRIBUTION OF FUNDS BY THE COURT

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

RULE 26: FOREIGN LANGUAGE INTERPRETERS

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

(B) Recognizing that appointment of a court interpreter is discretionary with the court, if the court finds a foreign language interpreter is necessary in a particular case, within 5 days of the order requiring an interpreter be appointed, the Clerk shall review the Roster of Certified and Registered Spoken Foreign Language Court Interpreters in Tennessee found on the AOC website.

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

(a) The Clerk shall obtain an interpreter according to the preference listed below:

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

(b) Once the interpreter has been obtained, the Clerk shall advise the court of the same and specific order of appointment shall be entered. Generally, the costs of interpreter services in both civil and criminal cases shall be taxed as court costs pursuant to Tenn. R. Crim. P. 28 and Tenn. R. Civ. P. 54. However, in cases involving indigent defendants who are entitled to counsel pursuant to Tennessee Supreme Court Rule 13, the cost of interpreter services may be assessed as set out in Section 4(d) of Tennessee Supreme Court Rule 13. See Local Rule 9, *supra*.

RULE 27: NAME CHANGE

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

(B) Minor: The verified petition to change the name of a minor must comply with the statute and be sworn to and signed by both parents and include copies of the original birth certificates of the child and

both parents, social security card and official photo identification of both parents, photograph of the minor and social security card of the minor, if any. Both parents and the minor must appear in Court. If both parents do not join in the Petition or if the identity or location of a parent is unknown, the petition must be specific as to all pertinent facts including all efforts to identify or locate the parent who did not join in the Petition. Service of process is required for any parent or guardian who does not join in the petition. The verified petition must establish by clear and convincing evidence that the proposed name change is in the best interest of the minor, otherwise the petition shall not be granted.

RULE 28: COURTROOM SECURITY

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

RULE 29: SUBPOENAS FOR MEDICAL RECORDS

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

HIPAA NOTICE

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

(A) serve the recipient of the subpoena by facsimile with a written objection to the subpoena, with a copy of the notice by facsimile to the party that served the subpoena, and

(B) simultaneously file and serve a motion for a protective order consistent with the requirements of T.R.C.P. 26.03 and 26.07.

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

APPENDIX A: ORDER TO DISMISS

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

JOHN DOE

DOCKET NO. _____

VS.

RICHARD ROE

ORDER TO DISMISS

This matter came on to be heard on the ____ day of _____, 20 ____, at _____ which time it appeared the parties had not responded in any matter to the Notice of Order of Dismissal heretofore filed in this case on the ____ day of _____, 20 ____, and that it is proper and in accordance with the provisions of T.R.C.P. 41 that this case stand dismissed.

IT IS ORDERED that this case stand dismissed without prejudice. All costs are taxed to the Plaintiff for which execution may issue if necessary.

IT IS FURTHER ORDERED that the Clerk of the Court provide an attested copy of this Order to counsel for all parties or to the parties should they not be represented by counsel.

ENTER this the ____ day of _____ 20 ____.

JUDGE

APPENDIX B: NOTICE OF ORDER OF DISMISSAL

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

JOHN DOE

DOCKET NO. _____

VS.

RICHARD ROE

NOTICE OF ORDER OF DISMISSAL

It appearing this case has laid dormant for an undue period of time and should be dismissed unless good cause exists, the Court, *sua sponte*, does hereby Order that this case stand dismissed THIRTY (30) DAYS from this date unless counsel for the parties show good cause for non-dismissal by the filing of a pleading title "Request that Claim not be Dismissed", wherein the following information is set forth:

1. Whether the case is now ready for trial.
2. In the event the case is not ready for trial:
 - (A) the earliest possible date all pre-trial preparations will be completed, including the taking of testimony by deposition;
 - (B) the reason, if any, why all discovery and the taking of any desired testimony by deposition cannot be completed within THIRTY (30) DAYS FROM the date of this Notice.

ENTER this the _____ day of _____, 20_____.

JUDGE

APPENDIX C: PRE-TRIAL ORDER

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

JOHN DOE

DOCKET NO. _____

VS

RICHARD ROE

PRE-TRIAL ORDER

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

1. The trial of this cause shall take approximately _____ and is presently docketed for the day(s) of _____, 20____.
2. The trial will be _____ non-jury _____ jury.
3. The parties are to supply the names and addresses of all potential **witnesses**, or persons with knowledge of facts, including expert witnesses, who may be used at trial, to opposing counsel, and file them with the Clerk by the _____ day of _____, 20____. Failure to list a potential witness's name shall result in the witness not being allowed to testify, without a showing of good cause for not listing the witness.
4. Any **exhibits** which will/may be introduced at trial shall be available for viewing by opposing counsel by the _____ day of _____, 20____. A list of the possible exhibits shall be filed with the Clerk by the _____ day of _____, 20____.
5. The hearing of the **pre-trial motions** is set for the _____ day of _____, 20____.
6. Any **stipulation** of the parties shall be reduced to writing and filed with the Clerk by the _____ day of _____, 20____.
7. The parties shall file all proposed jury instructions, if a jury trial, by the _____ day of _____, 20____.
8. The proposed Special Verdict Form, if a jury trial, shall be filed with the Clerk by the _____ day of _____, 20____.

ENTER this the _____ day of _____, 20____.

JUDGE

APPENDIX F, G, & H: PROPERTY DIVISION SHEETS

Appendix F. Personal Property Description

Personal Property Description & Date Acquired*	Marital		Non-Marital		Value		Incumbrance		Proposed Division		Reserved for Court Division	
					Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife
Totals												

*Attach additional pages if necessary to comply with Local Rules of Circuit Court Rule 15.02

APPENDIX F, G, & H: PROPERTY DIVISION SHEETS

Appendix G. Real Property Description

Real Property Description & Date Acquired*	Marital		Non-Marital		Value		Incumbrance		Proposed Division		Reserved for Court Division	
	Marital	Non-Marital	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife
Totals												

*Attach additional pages if necessary to comply with Local Rules of Circuit Court Rule 15.02

[Adopted effective November 2, 2006.]

APPENDIX F, G, & H: PROPERTY DIVISION SHEETS

Appendix H. Debt Description

Debt Descriptions & Date Acquired*	Marital		Non-Marital		Value		Incumbrance		Proposed Division		Reserved for Court Division	
	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife
Totals												

*Attach additional pages if necessary to comply with Local Rules of Circuit Court Rule 15.02

[Adopted effective November 2, 2006.]