

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: AMENDMENTS TO THE TENNESSEE RULES  
OF PROCEDURE & EVIDENCE**

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**Filed: September 22, 2006**

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**ORDER**

The Advisory Commission on the Rules of Practice & Procedure annually presents recommendations to the Court to amend the Tennessee Rules of Appellate, Civil, Criminal and Juvenile Procedure and the Rules of Evidence. In August 2006, the Advisory Commission completed its 2005-2006 term and presented its recommendations to the Court. After considering the amendments recommended by the Commission, the Court hereby publishes for public comment the proposed amendments set out in the attached Appendix A to this order.

The Court hereby solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is Monday, November 27, 2006. Written comments should be addressed to:

Mike Catalano, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order, including Appendix A, to LexisNexis and to Thomson-West. In addition, this order, including Appendix A, shall be posted on the Tennessee Supreme Court's website.

PER CURIAM

**APPENDIX A**

**PROPOSED AMENDMENTS  
PUBLISHED FOR PUBLIC COMMENT**

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 5

APPEAL AS OF RIGHT: SERVICE OF  
NOTICE OF APPEAL; DOCKETING OF THE APPEAL

(a) Service of Notice of Appeal in Civil Actions.--

[Add the following new second sentence to the second paragraph:]

With the notice of appeal, the trial court clerk shall also serve on the clerk of the appellate court either an appeal bond or an affidavit of indigency or a notice of the appellant's failure to file either an appeal bond or affidavit.

2007 Advisory Commission Comment

The amended language requires the trial court clerk to promptly serve either the appeal bond or affidavit of indigency with the notice of appeal upon the appellate court clerk. This amendment will ensure that appellants timely file their appeal bond with the notice of appeal. Failure to do so will result in the trial court clerk notifying the appellate court clerk that no appeal bond has been filed so that action can be taken to dismiss the appeal under Rule 6(a) prior to the filing of record.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 9

INTERLOCUTORY APPEAL BY PERMISSION  
FROM THE TRIAL COURT

[add new comment below pertaining to subdivision (c):]

2007 Advisory Commission Comment

When the intermediate court *grants* an interlocutory appeal under Rule 9, an appeal of the final decision of the intermediate court to the Supreme Court is governed by Rule 11. Accordingly, a party has 60 days from the date of the intermediate court's judgment in the interlocutory appeal to file an application for permission to appeal under Rule 11. Note, however, that when the intermediate court *denies* an interlocutory appeal, Rule 9(c) provides that an application for permission to appeal to the Supreme Court must be filed within 30 days of the intermediate court's order denying the interlocutory appeal.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 24

CONTENT AND PREPARATION OF THE RECORD

[In (b) and (c), change “90 days” to “60 days”.]

2007 Advisory Commission Comment

A transcript or statement of evidence must be filed with the trial court clerk within 60 days after filing of the notice of appeal unless extended. The period was formerly 90 days.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 25

COMPLETION AND TRANSMISSION OF THE RECORD

[In (a) change “90 days” to “60 days.”]

2007 Advisory Commission Comment

A transcript or statement of evidence must be filed with the trial court clerk within 60 days after filing of the notice of appeal unless extended. The period was formerly 90 days.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 31

BRIEF AND ORAL ARGUMENT OF  
AN AMICUS CURIAE

[add the following new subdivision (d):]

(d) Costs of Amicus Curiae Filing.—The court in its discretion may assess the costs of filing the motion for leave to file an amicus curiae brief and all relating filings against the amicus curiae, to be paid to the Appellate Court Clerk at the time of entry of the order granting or denying the motion.

2007 Advisory Commission Comment

New Rule 31(d) provides a procedure for assessing court costs against amici curiae.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 4

PROCESS

[Delete the second paragraph of the Advisory Commission Comment to Rule 4.04(10).]



TENNESSEE RULES OF CIVIL PROCEDURE

RULE 12

DEFENSES AND OBJECTIONS: WHEN AND  
HOW PRESENTED: BY PLEADING OR MOTION:  
MOTIONS FOR JUDGMENT ON PLEADINGS

[Delete the 1997 Advisory Commission Comment.]

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 15

AMENDED AND SUPPLEMENTAL PLEADINGS

15.01 Amendments–

[Insert between the existing second and third sentences:]

For amendments adding defendants pursuant to Tenn. Code Ann. §20-1-119, however, written consent of the adverse party or leave of court is not required.

2007 Advisory Commission Comment

The need for the new third sentence of Rule 15.01 was highlighted by *Jones v. Professional Motorcycle Escort Service, L.L.C.*, 193 S.W.3d 564 (Tenn. 2006). Because Tenn. Code Ann. §20-1-119 allows potential comparative tortfeasors pleaded in the answer to be added to the complaint, there is no reason to trouble the trial court with permission to amend. The new language resolves an ambiguity created by the statute and the earlier version of the rule.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 23

CLASS ACTIONS

[add the following new comment:]

2007 Advisory Commission Comment

T.C.A. §27-1-125 gives the Court of Appeals discretion to permit appeal of a trial court's grant or denial of class action certification. Permission from the trial court is unnecessary.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 32

USE OF DEPOSITIONS IN COURT PROCEEDINGS

32.01 Use of Depositions–

(3) [Amend the final sentence to read:]

Notwithstanding the foregoing provisions, depositions of experts taken pursuant to the provisions of Rule 26.02(4), as well as depositions of treating physicians, may not be used at the trial except to impeach in accordance with the provisions of Rule 32.01(1).

2007 Advisory Commission Comment

Added to the final sentence of Rule 32.01(3) are the words, “as well as depositions of treating physicians.” The language of the original allowed no exception for such experts, and it was the Commission’s intent to cover all experts. The clarifying language was added to erase any doubt.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 34

PRODUCTION OF DOCUMENTS AND THINGS  
AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

[delete existing 34.03 and replace with the following new 34.03:]

34.03 Persons Not Parties—Upon motion and reasonable notice and opportunity to be heard, a person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

2007 Advisory Commission Comment

The amendment references Rule 45, which provides that a subpoena duces tecum can command any person to produce documents or things or permit inspection of premises.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 56

SUMMARY JUDGMENT

56.04 Motion and Proceedings Thereon.—

[Amend the fourth sentence to read:]

The trial court shall state the legal grounds upon which the court denies or grants the motion, which shall be included in the order reflecting the court's ruling.

2007 Advisory Commission Comment

Previously Rule 56.04 required a trial judge “upon request” to state the legal grounds for granting summary judgment. The amendment extends that principle to a denial of summary judgment. The amendment also deletes the words “upon request.”

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 1

SCOPE AND DEFINITIONS

(b) General Sessions Court—

[Add new (b)(9), change original (b)(9) to (b)(10), and delete “and” following semi-colon in (b)(8):]

These rules govern the procedure in general sessions courts in the following instances:

\* \* \* \*

(9) the time for computations for setting and the process for continuing preliminary examinations pursuant to Rule 45; and

(10) any other situation where the context clearly indicates applicability.

\* \* \* \*

(e) Definitions—

\* \* \* \*

[amend (3) to read as follows:]

(3) “Magistrate” includes all judges of courts of record in the state but is primarily intended to mean judges of courts of general sessions. It also includes judicial commissioners and justices of the peace when they perform any of the functions contemplated by these rules.

2007 Advisory Commission Comment

The comments to Rule 5 cross-reference the time for setting the preliminary hearing to the time computation provisions of Rule 45. However, Rule 45 does not explicitly apply to general sessions court by its omission from Rule 1. The 2007 amendment to Rule 1(b)(9) corrects this omission but only concerning the time for setting, and process for continuing, the preliminary hearing once set. There is no intent to impact the requirements of Rule 5 (a)(1) dictating that, with

certain exceptions, an arrested person must be “taken without unnecessary delay before the nearest appropriate magistrate.”

The amendment to Rule 1(e)(3) adds “judicial commissioners” to the definition of a magistrate. This alteration makes the rule appropriately consistent with Tenn. Code Ann. §40-5-102 as it relates to courts which exercise jurisdiction at the initial stages of the criminal process as Rules 4 and 5 contemplate.



TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 4

ARREST WARRANT OR SUMMONS ON A COMPLAINT

[add new comment below:]

2007 Advisory Commission Comment

Tenn. Code Ann. §40-6-205 and Tenn. Code Ann. §40-6-215 require that a summons be issued instead of a warrant in certain circumstances.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 5

INITIAL APPEARANCE BEFORE MAGISTRATE

[amend the first portion of (c)(1) to read as follows:]

(c) Other Misdemeanors—

(1) Upon Plea of Guilty. If the offense charged is a misdemeanor, but of greater magnitude than a small offense, the magistrate shall inquire how the defendant pleads to the charge. If the plea is guilty, the plea shall be reduced to writing. The following rules shall then apply:

\* \* \* \*

2007 Advisory Commission Comment

Tenn. Code Ann. §40-1-109 requires a written guilty plea for misdemeanors. The amendment to subsection (c) conforms the rule to the statute.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 11

PLEAS

[amend (b)(1)(I) and (e) as follows:]

(b) Considering and Accepting a Guilty or Nolo Contendere Plea—

(1) \* \* \* \*

(I) if the defendant pleads guilty or nolo contendere, the court may ask the defendant questions about the offense to which he or she has pleaded. If the defendant answers these questions under oath, on the record, and in the presence of counsel, the answers may later be used against the defendant in a prosecution for perjury or aggravated perjury.

\* \* \* \*

(e) Record of Proceedings and Written Plea—There shall be a verbatim record of the proceedings at which the defendant enters a plea. If there is a plea of guilty or nolo contendere, the record shall include the inquiries and advice to the defendant required under Rule 11(b) and (c). The plea of guilty or nolo contendere shall be reduced to writing and signed by the defendant.

2007 Advisory Commission Comment

Prior Section (b)(1)(I) provided that a defendant may be subject to prosecution for “perjury or false statement.” False statement is no longer an offense in Tennessee and aggravated perjury is a new offense enacted in 1989. Thus, the subsection was amended to “perjury or aggravated perjury.”

Tenn. Code Ann. § 40-1-109 requires a written guilty plea for misdemeanors. The

amendment to subsection (e) conforms the rule to the statute but expands the concept so that all guilty or nolo contendere pleas are written. This has long been the practice in general sessions and criminal court.

TENNESSEE RULES OF EVIDENCE

RULE 501

PRIVILEGES RECOGNIZED ONLY AS PROVIDED

[amend existing Advisory Commission Comment (1999) as follows:]

Advisory Commission Comment

[In Advisory Commission Comment (1999), insert between “News Reporter’s Privilege” and “Psychiatrist-Patient Privilege” the following new reference to another privilege statute:]

T.C.A. §63-22-114. PROFESSIONAL COUNSELOR/MARITAL AND  
FAMILY THERAPIST/CLINICAL PASTORAL THERAPIST–CLIENT  
PRIVILEGE

The confidential relations and communications between licensed marital and family therapists, licensed professional counselors or certified clinical pastoral therapists and clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this part shall be construed to require any such privileged communication to be disclosed. However, nothing contained within this section shall be construed to prevent disclosures of confidential communications in proceedings arising under title 37, chapter 1, part 4 concerning mandatory child abuse reports.

# TENNESSEE RULES OF JUVENILE PROCEDURE

## RULE 1

### TITLE OF RULES —SCOPE —PURPOSE AND CONSTRUCTION

[Amend Rule 1(b) to read:]

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

## 2007 Advisory Commission Comment

The amendment applies Rule 39 of the Rules of Juvenile Procedure to all termination proceedings in juvenile court. The amendment clarifies that a judicial finding must be made in order for the Rules of Civil Procedure to be suspended and that the Rules of Juvenile Procedure shall apply in those proceedings where such finding has been made.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 2

DEFINITIONS

[Amend subsection (7) to read:]

(7) “Guardian ad litem” is a lawyer appointed by the court to protect the rights and interests of a child during the pendency of a proceeding involving the child and to advocate for the best interests of the child. In a dependency, neglect or abuse case the guardian ad litem must also ensure that the child’s concerns and preferences are effectively advocated, pursuant to Tennessee Supreme Court Rule 40.

2007 Advisory Commission Comments

The amendment clarifies that a guardian ad litem in juvenile court must be an attorney. This definition is consistent with the definition of a guardian ad litem pursuant to Tennessee Supreme Court Rule 40 in child abuse, neglect and dependency cases and Tenn. Code Ann. § 34-1-107 in guardianship cases.



TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 6

TIME LIMITS FOR DETENTION HEARINGS

[Delete Rule 6 in its entirety, including the title, and substitute the title above and the following new rule:]

(a) DELINQUENT CASES. In the case of a child alleged to be delinquent, a detention hearing shall be held no later than seventy-two (72) hours after the child is placed in detention to determine whether his or her detention is required. In computing the seventy-two (72) hours limitation for purposes of such detention hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is placed in detention.

(b) UNRULY CASES. In the case of a child alleged to be unruly, a detention hearing shall be held no later than twenty-four (24) hours after the child is placed in detention. A child alleged to be unruly shall not be detained for more than twenty-four (24) hours unless there has been a detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order, and in no event shall such a child be detained for more than seventy-two (72) hours after the child is placed in detention prior to an adjudicatory hearing. In computing the twenty-four (24) hours limitation for purposes of such detention hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than seventy-two (72) hours after the child is placed in detention. In computing the seventy-two (72) hours limitation for purposes of such adjudicatory hearing, nonjudicial days are excluded, but in no

event shall the hearing be held later than eighty-four (84) hours after the child is placed in detention. Nothing herein shall prohibit the court from ordering the placement of children in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this section.

#### 2007 Advisory Commission Comments

The 2007 Amendment clarifies time computation for detention of delinquent and unruly children. The 2007 Amendment also eliminates prior subsection (c), which pertained to dependent and neglected cases, as duplicative of Tenn.R.Juv.P 16(a).

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 10

SUMMONS

[Add the following new subsection (5) to 10(c), Service of Summons:]

(5) Service of a summons upon a party in a foreign country shall be pursuant to the Tennessee Rules of Civil Procedure Rule 4A - Service Upon Defendant In A Foreign Country.

2007 Advisory Commission Comments

Prior to the 2007 amendment, Rule 10 did not address service upon a party in a foreign country. The 2007 amendment adds section (c)(5) to state that service upon a party in a foreign country will be pursuant to Rule 4A of the Rules of Civil Procedure.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 16

PRELIMINARY HEARINGS IN DEPENDENT,  
NEGLECTED AND ABUSE CASES

[Delete Rule 16 in its entirety and substitute the following (including the amended title, above):]

(a) REQUIREMENT OF A PRELIMINARY HEARING. If pursuant to Rule 5 an alleged dependent, neglected or abused child is removed from the custody of such child's parent, guardian or legal custodian prior to a hearing on the petition and is not returned to the child's said parent, guardian or legal custodian a preliminary hearing shall be held no later than seventy-two (72) hours after the child's removal, to determine whether such child's removal is required under § 37-1-114. In computing the seventy-two (72) hours' limitation for purposes of such preliminary hearing, nonjudicial days are excluded, but in no event shall the hearing be held later than eighty-four (84) hours after the child is removed from the custody of such child's parent, guardian or legal custodian. The evidence at this hearing may include reliable hearsay.

(b) WAIVER OF PRELIMINARY HEARING. The provisions of subsection (a) may be waived by express and knowing waiver, by the parties to an action including the parents, guardian or legal custodian and the child or guardian ad litem for the child. Any such waiver may be revoked at any time, at which time a preliminary hearing shall be held within seventy-two (72) hours of the revocation of the waiver; the seventy-two (72) hours limitation shall be computed as in subsection (a).

(c) DISPOSITION AT PRELIMINARY HEARING. At the conclusion of the preliminary hearing, the court shall return the child to the person from whose custody the child was removed unless the court determines that the child's removal is required under § 37-1-114. If the court determines at the hearing that the child's removal is required under § 37-1-114, the court may order that the child be placed in the custody of a suitable person, persons, or agency, as specified in Tenn. Code Ann. § 37-1-116(d). If the court returns the child to the person from whose custody the child was removed, the court may enter an interim or preliminary order setting forth conditions of the return designed to protect the rights and interests of the child and the parties pending further hearing.

(d) REHEARING ON AFFIDAVIT. If the child is not returned, and a parent, guardian or custodian has not been notified of the preliminary hearing, did not appear or waive appearance at this hearing, and files an affidavit showing these facts, the court shall rehear the matter within seventy-two (72) hours of the filing of the affidavit, computed as in subsection (a), and order such child's return unless it appears from the hearing that the child's detention or shelter care is warranted or required under § 37-1-114.

#### 2007 Advisory Commission Comments

The amendment clarifies time computation for convening a preliminary hearing and is also intended to eliminate differing interpretations of the phrase '3 days', as utilized in T.C.A. §37-1-117. The amendment also conforms to the provisions of T.C.A. §37-1-117, including the addition of subsection (d), which was formerly omitted from the Rule.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 17

TIME LIMITS ON SCHEDULING ADJUDICATORY HEARINGS

[Amend subsection (b) to read:]

(b) CONTINUANCES. Upon good cause being shown any case may be continued to a date certain as the court may direct.

2007 Advisory Commission Comments

The amendment addresses the issue of continuances in juvenile cases in order to emphasize the necessity for timely hearings and to minimize the negative effect that continuances have on children achieving permanency in a timely manner. The term “custody” includes children placed in detention or the legal custody of the Department of Children’s Services or any licensed child-placing agency.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 22

AGREED ORDERS IN CIVIL MATTERS

[Delete Rule 22 in its entirety and substitute instead (including amended title, above):]

(a) GENERAL PROVISIONS. Most civil matters within the jurisdiction of the juvenile court may be resolved by a written agreement between the parties, submitted to the court in the form of an agreed order. An agreed order, upon being approved by the court and entered in its minutes, becomes the order or decree of the court with all of the force and effect that any order would have after a full hearing prior to adjudication. An agreed order should recite that the parties are aware that the agreement is based upon the order of the court and that failure to comply therewith without just cause places them in contempt of court and subjects them to such action as the court deems proper within its jurisdiction.

(b) CHILD CUSTODY CASES. In child custody cases pursuant to T.C.A. § 36-2-301, et seq., when the parties are in complete agreement in matters of custody, support, and visitation, and a court hearing appears to be unnecessary, the parties may enter into an agreed order.

(c) MODIFICATION. An agreed order may thereafter be modified due to a change of circumstances, by agreement between the parties with the approval of the court, or by order of the court upon notification to the parties and a hearing. In no event shall modification of an agreed order result in a child being placed into the custody of the Department of Children's Services without the

appropriate petition having been filed with the clerk of the court alleging the child to be either dependent, neglected, abused, unruly or delinquent.

(d) DEPENDENT, NEGLECT AND ABUSE CASES. If there is a petition alleging dependency, neglect or abuse in the matter the court shall not approve an agreed order regarding custody, support, or visitation awarded to a party other than the state unless there has been a social investigation as required by law, and the investigating agency's recommendation concurs with the agreement between the parties. This subsection shall not be construed as eliminating the judicial findings required for children in state custody by T.C.A. § 37-1-166 and 37-2-409 or as otherwise required by case law and federal regulations.

#### 2007 Advisory Commission Comments

The amendment changes the terminology of the rule from “Consent Decrees in Civil Matters” to “Agreed Orders in Civil Matters.” Because the term “consent decree” in the context of juvenile issues often carries the connotation of a settlement in a class action lawsuit, the rule has been amended to substitute “agreed order” which appears to be a more common term for the orders memorializing agreements in juvenile court. The amendment also separates the provisions regarding agreed orders in custody cases and dependency cases into two different subsections as different considerations are required for those cases. In regard to agreed orders in custody cases, counsel is urged to carefully review the holding in *Blair v. Badenhope*, 77 S.W.3d 137 (Tenn. 2002) and its progeny regarding the possible impact of an agreed order changing custody from a parent to a third party on any future modification of such agreed order. In regard to dependency cases, the amendment makes clear that the statutorily required judicial findings for children in state custody must be made even when the case is settled by an agreed order. Finally, the amendment clarifies that a modification of an agreed order may not result in a child being placed in the Department of Children’s Services custody without the appropriate petition having been filed.



TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 25

DISCOVERY

[Amend the first and second sentences to read:]

By local rule and according to whatever process, informal or otherwise, is appropriate for that court, each juvenile court shall insure that the parties in delinquent and unruly proceedings in juvenile court have access to information which would be available in criminal court and that parties in other cases, including dependent, neglect and abuse cases, have access to information which would be available in the circuit court. A party to a civil action in termination of parental rights cases, paternity cases, guardianship and mental health commitment cases involving children, and child custody proceedings under T.C.A. §§36-6-101 et seq., 36-6-201 et seq., and 37-1-104(a)(2) and (f) may serve notice of or request for discovery on another party.

Advisory Commission Comment

The amendment clarifies that discovery is obtainable in dependency, neglect and abuse cases. The amendment also specifies the juvenile proceedings that are subject to the Rules of Civil Procedure where a party may serve notice of or request for discovery on another party.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 27

TRIAL BY THE COURT

[Amend subsection (a) to read:]

(a) CONDUCT OF HEARINGS, GENERALLY.

(1) Juvenile court hearings shall be conducted in accordance with the highest standards of courtroom conduct and deportment which shall be prescribed in writing by local rules. Unless specifically addressed in this rule, provided by statute or Tennessee Supreme Court Rule, proceedings, except dependent and neglected cases, shall be open to all persons who are properly concerned. In the discretion of the court, the general public may be excluded from any juvenile or paternity proceeding and only those persons having a direct interest in the case may be admitted.

(2) Proceedings in transfer cases shall be open to the public unless, upon the motion or request of one of the parties or upon the judge's own motion, the court in balancing the respective interests of the parties to privacy and/or to a fair trial and the public's interest in open judicial proceedings, determines that the proceeding, parts of the proceeding or phases of the proceedings, should be closed. In balancing the respective interests of the parties the court shall apply the following rules:

(A) The party seeking to close the hearing shall have the burden of

proof;

(B) The juvenile court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings;

(C) Any order of closure must be no broader than necessary to protect the determined interests of the party seeking closure;

(D) The juvenile court must consider reasonable alternatives to closure of proceedings; and

(E) The juvenile court must make adequate written findings to support any order of closure.

#### 2007 Advisory Commission Comments

While there is not a specific statutory or case law definition in Tennessee of a “closed hearing,” the Commission recognizes the sensitive nature of juvenile proceedings. A suggested definition of a *closed hearing* is a hearing limited to the parties to the proceeding, and person(s) that the court finds to have a direct interest in the proceeding and whose presence at the proceeding is necessary for the proceeding’s full and fair hearing. *See* T.C.A. §§ 36-1-111, 37-1-124, 37-10-304 and Tenn. Sup. Ct. R. 24 for specific proceedings that are closed or open to the public.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 28

ADJUDICATORY HEARING

[Amend the first sentence in subsection (a) to read:]

(a) SCOPE OF HEARING. The adjudicatory hearing is the proceeding at which the court determines whether the factual allegations of the petition are true and whether the evidence supports a finding that a child is delinquent, unruly, dependent, neglected or abused, or supports a finding authorizing the termination of parental rights as provided in Rule 39. \* \* \* \*

[Amend the third sentence in subsection (b)(2) to read:]

If the party wishes an attorney and is indigent or otherwise entitled to an attorney, the court shall appoint an attorney pursuant to Supreme Court Rule 13 or other applicable law to represent such party in all cases, or in which the court in its discretion deems the appointment of an attorney to be appropriate.

Advisory Commission Comment

The amendment to (a) adds “abused” to the possible findings listed in the first sentence. The amendment to (b)(2) adds a reference to Supreme Court Rule 13, which governs the appointment of counsel for indigent persons.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 37

APPOINTMENT OF A GUARDIAN AD LITEM FOR THE CHILD

[Delete Rule 37 in its entirety and substitute instead:]

(a) In delinquent and unruly proceedings, the court at any stage of a proceeding on application of a party or on its own motion, shall appoint a guardian ad litem for a child if such child has no parent, guardian or custodian appearing on such child's behalf; or such parent's, guardian's or custodian's interests conflict with the child's; or in any other case in which the interests of the child require a guardian.

(b) In any proceeding resulting from a report of harm or an investigation report under T.C.A. §§ 37-1-401 -- 37-1-411 and T.C.A. § 37-1-101, et. seq., the court shall appoint a guardian ad litem for the child who is or may be the subject of such report. The guardian ad litem shall comply with the requirements of Tennessee Supreme Court Rule 40.

(c) A party to the proceeding or the party's employee or representative shall not be appointed as the child's guardian ad litem.

2007 Advisory Commission Comments

The 2007 amendment conforms Rule 37 to T.C.A. § 37-1-149 and Tennessee Supreme Court Rule 13 which set out the provisions for the appointment of guardians ad litem. T.C.A. § 37-1-401, et. seq. is the law on mandatory child abuse reports. T.C.A. § 37-1-402 states that the purpose of this law is to protect children whose physical or mental health and welfare are adversely affected by brutality, abuse or neglect. The amendment also refers practitioners to Tennessee Supreme Court Rule 40 which provides for the responsibilities of the guardian ad litem in neglect, abuse and dependency proceedings.

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 39

TERMINATION OF PARENTAL RIGHTS

[Delete Rule 39 in its entirety and substitute instead:]

(a) PETITION. A petition to terminate the parental rights of either or both parents to a minor child may be filed by the prospective adoptive parent(s) of the child, including extended family members caring for related children, any licensed child-placing agency having custody of the child, the child's guardian ad litem, a court appointed special advocate (CASA) agency, or the Department of Children's Services. The petition shall state:

(1) The child's birth name;

(2) The child's age or date of birth;

(3) The child's current residence address or county of residence or that the child is in the custody of the department or a licensed child-placing agency;

(4) Any other facts that allege the basis for termination of parental rights and that bring the child and parties within the jurisdiction of the court;

(5) A verified statement that:

(A) the putative father registry maintained by the department has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

(B) indicates if there exists any other claim or potential claim

to the paternity of the child; and

(C) describes whether any other parental or guardianship rights have been terminated by surrender, parental consent, or otherwise, and whether any other such rights must be terminated before the child can be made available for adoption.

(6) The petition or request for termination in the adoption petition shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent(s) or guardian(s) to the child who is the subject of the order, and of the child to those parent(s) or guardian(s);

(7) The child will be placed in the guardianship of other person, persons or public or private agencies who, or that, as the case may be, shall have the right to adopt the child, or to place the child for adoption and to consent to the child's adoption; and

(8) The parent or guardian shall have no further right to notice of proceedings for the adoption of the child by other persons and that the parent or guardian shall have no right to object to the child's adoption or thereafter, at any time, to have any relationship, legal or otherwise, with the child.

(9) In addition to meeting the foregoing requirements, the petition shall contain the following notice: Any appeal of the trial court's final disposition of the petition for termination of parental rights will be governed by Rule 8A, Tennessee Rules of Appellate Procedure, which imposes special time limitations for the filing of a transcript or statement of the evidence, the completion and transmission of the record on appeal, and the filing of briefs in the appellate court, as well as other

special provisions for expediting the appeal. All parties must review Rule 8A, Tenn. R. App. P., for information concerning the special provisions that apply to any appeal of this case.

(b) SERVICE OF PROCESS AND NOTICE OF PROCEEDINGS.

(1) Upon the filing of the petition, the court shall cause the necessary parties as provided in T.C.A. §36-1-117 to be summoned in accordance with the Rules of Civil Procedure.

(2) Prior to terminating the rights of any parent who is incarcerated it must be affirmatively shown to the court that the incarcerated parent or guardian received notice of the following:

(A) The time and place of the hearing to terminate parental rights;

(B) That the hearing will determine whether the rights of the incarcerated parent or guardian should be terminated;

(C) That the incarcerated parent or guardian has the right to participate in the hearing and contest the allegation that the rights of the incarcerated parent or guardian should be terminated, and, at the discretion of the court, such participation may be achieved through personal appearance, teleconference, telecommunication or other means deemed by the court to be appropriate under the circumstances; and

(D) That if the incarcerated parent or guardian wishes to



participate in the hearing and contest the allegation, such parent or guardian:

(i) If indigent, will be provided with a court appointed attorney to assist the parent or guardian in contesting the allegation, and

(ii) Shall have the right to perpetuate such person's testimony or that of any witness by means of depositions or interrogatories as provided by the Tennessee Rules of Civil Procedure.

(E) If the incarcerated parent or guardian voluntarily signs a waiver or if said person takes no action after receiving notice of such rights, the court may proceed with the termination proceedings without the presence of the incarcerated parent or guardian.

(c) RESPONSE OF RESPONDENT. Any respondent may personally appear or file a written answer to the petition. A written response shall admit or deny the allegations of the petition and shall set forth the name and address of the answering respondent or his or her attorney.

(d) GUARDIAN AD LITEM. Appointment of a guardian ad litem for the child shall be governed by T.C.A. § 37-1-149.

(e) ADJUDICATORY HEARING ON TERMINATION.

(1) The court shall conduct an adjudicatory hearing to determine the issues raised by the petition and by any answer(s) filed. Notice of the hearing shall be provided in the summons.

(2) At the beginning of the hearing, any party who appears without an attorney shall be informed of the right to an attorney, and in the case of an indigent respondent, an attorney shall be appointed pursuant to Tennessee Supreme Court Rule 13, unless waived by the party. Any such waiver shall be reflected in the record pursuant to Rule 30 of these rules.

(3) The court may, as it deems necessary, order the child to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other appropriate person or agency. If a parent's ability to care for the child is at issue, the court may order a similar examination of the parent.

(4) The court may for good cause shown continue or take the case under advisement for such time as is required for receiving additional evidence, reports or assessments, or any other necessary information.

(5) All findings of fact shall be based on clear and convincing evidence. Neither the husband-wife, physician-patient, psychologist-patient, or clergy-penitent privilege shall be grounds for excluding any evidence in termination of parental rights proceedings.

(f) DISPOSITION.

(1) If the court finds that any one or more of the grounds authorizing

termination of parental rights exist and that the best interests of the child require the termination of such rights pursuant to the statute, the court shall enter an order that makes specific findings of fact and conclusions of law within thirty (30) days of the conclusion of the hearing.

(2) Should the court conclude that there are no grounds for termination of parental rights, or that the best interests of the child require that such rights should not be terminated, the court shall dismiss the petition, and set forth in the order the facts and conclusions upon which the dismissal is based.

(3) A juvenile court order terminating parental rights shall award complete custody, control, and guardianship of the child to the Department of Children's Services or a licensed child-placing agency with the right to place the child for adoption and to consent to the adoption in loco parentis.

(4) When an appeal is taken from the trial court's disposition, the court in its discretion may stay its order or otherwise suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal and upon such terms as it deems proper. The trial court's decision regarding a stay, or other such relief granted pursuant to this subparagraph, may be reviewed by the appellate court pursuant to Rule 7, Tenn. R. App. P.

[Delete existing Advisory Commission Comments in its entirety and substitute instead:]

#### 2007 Advisory Commission Comments

The amendment corresponds the Rule with the applicable code, T.C.A. § 36-1-113, which was substantially revised in 1996.