

**RULES OF THE
PROBATE COURT
OF
SHELBY COUNTY, TENNESSEE**

EFFECTIVE September 1, 2024

TABLE OF CONTENTS

RULE 1	General Information for Attorneys	1
RULE 2	Sessions and Courtroom Procedure	3
RULE 3	Rules of Civil Procedure and Rules of Evidence	5
RULE 4	Electronic Filing	5
RULE 5	Assignment of Cases.....	5
RULE 6	Special Settings.....	6
RULE 7	Pleadings Generally	6
RULE 8	Delivery of Pleadings to Court that Require Special Attention	7
RULE 9	Petitions to Open Cases	8
RULE 10	Fiduciary Bonds.....	9
RULE 11	Service of Memoranda.....	10
RULE 12	Discovery	10
RULE 13	Guardians ad Litem and Attorneys ad Litem	11
RULE 14	Inventory.....	12
RULE 15	Property Management Plans	13
RULE 16	Accountings	13
RULE 17	Money Invested with Probate Court Clerk.....	16
RULE 18	Petitions for Elective Share, Homestead and Year’s Support	16
RULE 19	Fees	17
RULE 20	Petitions to Close or Terminate Cases	20
RULE 21	Orders	22
RULE 22	Restraining Orders	23
RULE 23	Jury Trials	23
RULE 24	Will Contests.....	24
APPENDIX	November 8, 2022, Shelby County Attorney Letter with Attachments pertaining to Probate Court Jurisdiction	

RULES OF THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE

The Shelby County Probate Court powers and jurisdiction were conferred by the Public Acts of 1870, the subsequent amended Public and Private Acts, Tenn. Code Ann., and the Shelby County Code of Ordinances, Chapter 10, Article IV. See Appendix.

The Probate Court of Shelby County, Tennessee, hereby adopts the following as its Local Rules of Court:

RULE 1 GENERAL INFORMATION FOR ATTORNEYS

A. Only attorneys licensed to practice law in Tennessee may represent persons in matters coming before the Court, except that attorneys who are not licensed to practice in Tennessee may appear *pro hac vice* under the terms and conditions set forth in Tennessee Supreme Court Rule 19. This Rule requires Tennessee counsel to sign all pleadings and appear in Court with the non-resident attorney. The Court expects attorneys who have not appeared in Probate Court to be formally introduced to practice before the Probate Court.

B. An attorney who opens any matter becomes the attorney of record and is obligated to comply with all applicable laws, these Local Rules, and all Orders of the Court. It is the responsibility of the attorney of record to see to the full extent of the attorney's professional ability that the matter is properly managed, administered, assets distributed, and the cause closed without undue delay. The attorney of record is not relieved of this responsibility unless and until the attorney of record obtains an Order of Withdrawal or an Order Substituting Counsel, or unless a Notice of Appearance by other counsel representing the same party in interest is filed in the cause.

C. The Court may enter an Order Substituting Counsel or, in the alternative, a Notice of Appearance may be filed with the Clerk if signed by both the new and withdrawing attorney(s); however, the signature of the withdrawing attorney(s) is not required if the withdrawing attorney(s) is no longer engaged in the practice of law.

D. If the Court appoints a fiduciary other than the petitioner represented by the attorney of record, or if the Court removes from office the fiduciary represented by the attorney of record, the attorney representing the

successor fiduciary shall replace the prior attorney of record as attorney of record. The Clerk shall update the record accordingly.

E. Counsel appearing in Probate Court shall follow the Guidelines for Professional Courtesy and Conduct adopted by the Memphis Bar Association. Counsel are expected to deal with opposing counsel, the parties, and the Court in a professional, courteous, and ethical manner. Counsel are expected to be open and fair in the handling of probate matters, consistent with adversarial responsibilities.

F. Before presenting a contested matter to the court, counsel shall—to the best of their ability—encourage their clients to settle their differences. Mediation is a proven and effective method of alternative dispute resolution. Engaging in mediation promotes settlement and enhances the just and efficient resolution of civil litigation. The Court encourages the voluntary use of mediators under Tennessee Supreme Court Rule 31 in contested matters. If the parties are unable to agree upon a mediator, the Court will select a mediator using the procedure set forth in Tennessee Supreme Court Rule 31, section 4(b). Mediation will be required in most highly controversial and contested cases, and in all will contests.

G. In proceedings to sell real estate, it shall not be necessary for the appraiser to testify in person, provided:

1. the appraiser is properly licensed,
2. the written appraisal is filed in the cause, and
3. the appraised value is not more than 10% higher than the proposed sale price.

The appraiser may nevertheless be called to testify if any interested party, attorney, or Guardian Ad Litem believes the appraiser's testimony would be important to the issues to be decided.

H. A list of website and office forms, currently available from the Probate Court Clerk, is attached as Appendix A to these Rules and may also be found at the Probate Court website.

I. Whenever the Court determines that justice requires it, the Court may suspend any of the Local Rules.

RULE 2
SESSIONS AND COURTROOM PROCEDURE

A. Both Divisions of the Probate Court will open court at 9:00 a.m. Monday through Friday. Matters are heard on an unscheduled and scheduled basis. See Division preferences published by each Judge.

1. The Court hears Petitions for Change of Name on Thursdays from 1:00 p.m. to 2:00 p.m., with the Judges alternating months to hear these petitions.

2. The Court hears Mental Health Commitments on Thursdays at 1:00 p.m. with the Judges alternating months to hear these commitments. These hearings take place in the courtroom at Memphis Mental Health Institute.

B. The Judge shall wear a Judicial robe during all sessions of the Court except when, in the discretion of the Judge, the circumstances are such, or the matter before the Court is of such a nature, as justifies a less formal hearing.

C. When the Judge first enters the Courtroom each day, the Deputy Sheriff shall call the Court to order directing all in attendance to stand, and upon being so instructed by the Court, will open Court in the manner following:

"Hear Ye! Hear Ye! This Honorable Probate Court of Shelby County is now open for the transaction of business pursuant to adjournment. The Honorable Judge [Judge's Name] presiding. All persons having business with this Court draw near, give attention, and ye shall be heard. Be seated, please."

D. The use of cellular phones and audible pagers in the Courtroom is prohibited unless permitted by the Court.

E. There will be no eating, drinking, or smoking in the Courtroom, and no food or drink containers shall be brought into the Courtroom unless permitted by the Court.

F. The front row of seats at the counsel table in the Courtroom is reserved for licensed attorneys.

G. All attorneys and Court attendants will wear appropriate business attire both in person and while participating remotely. Litigants and witnesses as well are to be properly attired, consistent with the dignity of the Court. Counsel are urged to review the Dress Codes for Court Appearance, which

are posted on the bulletin board in the Probate Court Clerk's Office and on the Probate Court's website, and to discuss with clients prior to making an appearance in Court.

H. Before presenting a matter, attorneys are encouraged to state their name, the docket number of the case, and the nature of the matter being presented. For example: "Your Honor, for the record my name is [attorney's name], and I have a Petition to open an intestate estate and appoint an administrator. The docket number is [docket number]."

I. When addressing the Court, unless excused by the Judge, counsel should rise and remain standing while making any objection, argument, or statement to the Court, including such time as the Court may address or interrogate counsel. Counsel are not required to stand while interrogating witnesses, but may do so at counsel's option.

J. All items that are presented to the Court such as exhibits and orders shall be handed to the Judge through the Court attendants. Attorneys must seek and obtain permission from the Judge before approaching the Bench or a witness.

K. Upon the Judge instructing the Sheriff to adjourn Court for the day, the Sheriff will direct all persons in the Courtroom to stand and will adjourn Court in the following manner:

"This Court now stands adjourned until tomorrow morning at 9:00 o'clock (or such other day and time as the Court may indicate)."

L. The Deputy Sheriff in attendance upon the Court will be charged with the responsibility of requiring compliance with these standards of Courtroom conduct.

M. All lawyers that have appeared in a case and all unrepresented parties, including claimants and fiduciaries, shall notify the Probate Clerk, lawyers and unrepresented parties in writing of any change of address, phone number, and email, which changes shall be made in the Probate computer system.

N. Whenever a participant in a probate proceeding may have a disability requiring special accommodation, the Clerk of the Court or the Courtroom Deputy should be notified in order to allow the Court to comply with the letter and spirit of the Americans with Disabilities Act.

O. Remote proceedings are available at the discretion of the Court. For information on remote proceedings, see the Division preferences published by each Judge.

P. Substitute Judges do not have authority to approve fees or to modify a property management plan.

**RULE 3
RULES OF CIVIL PROCEDURE
AND RULES OF EVIDENCE**

The Tennessee Rules of Civil Procedure (Tenn.R.Civ.P.) and Tennessee Rules of Evidence shall apply.

**RULE 4
ELECTRONIC FILING**

In accordance with Tenn. R. Civ. P. 5B, this Court allows documents to be filed, signed, and verified by registered users of its electronic filing system. Documents may be signed and/or verified by attorneys with an electronic signature either in the form of s/____ (typed out), a graphic representation of an electronic signature, and/or a digital graphic representation of the signature as signed by the person.

**RULE 5
ASSIGNMENT OF CASES**

A. The Probate Clerk assigns newly filed cases to a particular Division of Court by a random computerized process or as otherwise necessary to comply with the directives of the Administrative Office of the Courts. When filing a matter that is a companion case or that relates to a pending matter, the attorney should call this fact to the attention of the Clerk. Under such circumstances, the Clerk will assign the new case to the Division of Court in which the companion or related case is pending.

B. After a case has been assigned to a particular Division, the Judge of that Division shall have complete control over the matter. In the interest of justice and for good cause, the Judges, by mutual consent, may transfer a case from one Division of Court to the other.

RULE 6
SPECIAL SETTINGS

A. The Court hears simple, brief matters without setting a specific date and time for the hearing in advance, as provided by Local Rule 2. Subject to the Court's discretion, the following matters shall be first filed and then set in advance for hearing at a date and time certain:

1. Petitions to sell or encumber real property.
2. Petitions to ratify substantial or unusual unauthorized encroachments.
3. Petitions to admit wills to probate in solemn form.
4. Petitions to set a year's support, to set aside exempt property or to determine elective share.
5. Petitions to contest a will.
6. Petitions to establish a lost or spoliated will.
7. Petitions to appoint Conservators.
8. Petitions to transfer Conservatorships or Guardianships.
9. Petitions to approve or to modify Property Management Plans.
10. Petitions to establish guardianships, if the Ward will be present.
11. Petitions to terminate or extend Guardianships.
12. Petitions for fees.
13. All contested matters.
14. Matters such as those involving complex legal or factual issues or those that are expected to take more than fifteen (15) minutes to be heard.
15. Matters involving trusts.
16. Motions to withdraw.

When a matter is one that must be specially set for a hearing, see the Division preferences published by each Judge.

RULE 7
PLEADINGS GENERALLY

A. All Petitions and Complaints filed in Court shall be verified or sworn to and all pleadings shall be addressed in the following form:

"TO THE HONORABLE JUDGES OF THE PROBATE COURT OF SHELBY COUNTY, TENNESSEE:"

B. All Petitions, Motions, and other pleadings shall be filed with the Clerk prior to presentation to the Court.

C. All Petitions, Motions, and other pleadings shall be styled in the following manner:

1. For Estates: “In re Estate of ...”
2. For Conservatorships: “In re Conservatorship of ...”
3. For Guardianships: “In re Guardianship of ...”
4. For V.A. Guardianships: “In re Veteran’s Guardianship of ...”

After indicating the type of case, the plaintiff(s) or petitioner(s) can be named, followed by the names of the defendant(s) or respondent(s).

D. All pleadings shall set forth the docket number, style of the cause, the nature of same, and the name and signature of counsel. All pleadings filed by an attorney in a matter shall also contain the address, telephone number, email address, and Board of Professional Responsibility number of counsel. The title of an order should contain a brief description of the action taken. All pleadings shall be on 8½ x 11 inch paper.

E. The Probate Court Clerk’s website contains forms of often-used pleadings and orders.

RULE 8
DELIVERY OF PLEADINGS TO COURT
THAT REQUIRE SPECIAL ATTENTION

When a motion, petition, or other pleading is set for a hearing or otherwise requires the Court’s prompt attention, the proponent shall not only file such pleading with the Clerk but shall also deliver a courtesy copy of the pleading and all supporting materials to the chambers of the judge assigned to the case, by email and hand delivery, with notice of such transmittal given to all parties. Failure to follow this rule may result in the matter not being heard or considered.

RULE 9
PETITIONS TO OPEN CASES

A. Decedent's Estates

1. All Petitions to admit wills to probate and petitions for the administration of estates shall comply with TENN. CODE ANN. § 30-1-117, including any amendments thereto.

2. Pursuant to TENN. CODE ANN. § 71-5-116(d)(1)(C), Petitions to admit wills to probate and Petitions for the administration of estates shall state whether or not the decedent was over or under age 55 and was or was not a TennCare recipient.

3. As required by TENN. CODE ANN. § 30-2-301(b)(3) and TENN. CODE ANN. §30-2-301(b)(5), the Personal Representative shall testify that he/she will file affidavits within sixty (60) days after the issuance of either Letters of Administration or Letters Testamentary. Said affidavits must verify that the Personal Representative has complied with the aforementioned statutes, giving notice to beneficiaries or heirs and TennCare.

4. The Order appointing a nonresident personal representative shall order the nonresident personal representative to secure appointment of the Secretary of State as agent for service of process (See TENN. CODE ANN. §35-50-107(b)(2)).

B. Conservatorships

1. All Petitions to Appoint Conservator shall comply with TENN. CODE ANN. §34-3-104.

2. Notice should be served upon persons listed under TENN. CODE ANN. §34-1-106.

3. Attorneys should also review the Rules herein regarding Fiduciary Bonds and Guardians ad Litem.

4. Pursuant to TENN. CODE ANN. §34-1-129, an Order Appointing Conservator must explicitly state the rights being transferred from the Respondent to the fiduciary.

C. Guardianships of Minors

1. All Petitions to Appoint Guardians shall comply with TENN. CODE ANN. §34-2-104.

2. Notice should be served in accordance with Tenn. R. Civ. P. (See TENN. CODE ANN. §34-1-106).

3. Attorneys should also review the Rules herein regarding Fiduciary Bonds and Guardians ad Litem.

D. Muniment of Title and Small Estate

1. Under current practice, a Petition to Admit Will as Muniment of Title to real estate, pursuant to TENN. CODE ANN. §32-2-111, as amended, and an Affidavit as to Small Estate Limited Letters of Authority, pursuant to TENN. CODE ANN. §30-4-101, as amended, may both be filed in the same decedent's estate whether or not filed simultaneously.

2. In small estate proceedings affidavits should have appropriate documentation attached confirming the nature and value of the assets listed in the affidavit.

3. If a beneficiary of the small estate is a minor, the parent(s) must complete and sign an appropriate pleading concerning the beneficiary's status as a minor and personally appear before the Court in order to allow the parent(s) to receive the funds on behalf of the minor. The Court will determine if a bond is required.

**RULE 10
FIDUCIARY BONDS**

A. In any case where a fiduciary is appointed, the Court will consider setting a bond. A trustee may be required to post a bond in any Court-established trust.

B. The Court expects the attorney of record to determine, in advance, whether a proposed fiduciary will qualify for any required fiduciary bond.

C. In matters where a non-resident fiduciary seeks appointment, TENN. CODE ANN. §35-50-107(c) gives the Court discretion to set a bond. It is highly probable that a bond will be set in these cases.

D. It is the responsibility of the attorney of record to advise the Court whenever a bond appears to be either insufficient or excessive, and to enter an order increasing or decreasing the bond as is appropriate. The attorney of record shall provide a copy of the order adjusting the bond to the agent of the bond company that issued the bond.

RULE 11
SERVICE OF MEMORANDA

Legal memoranda, when appropriate for the Court’s evaluation of a petition or motion, shall be served no later than seven (7) days before the date of the hearing unless a different time is set by the Tennessee Rules of Civil Procedure or by the Court. Opposing memoranda shall be filed and served at least three (3) days before the hearing unless a different time is set by the Tennessee Rules of Civil Procedure or by the Court.

RULE 12
DISCOVERY

A. When answering Interrogatories, Requests for Admissions, and Requests for Production of Documents, the interrogatory or request shall be numbered and the replying party must, as a part of the answer, set forth immediately preceding the answer, the interrogatory or the request made, in the same numerical sequence.

B. In responding to Requests for Production of Documents, the respondent must specifically list each document that is being produced, by reference to the title of the document, or by reference to a numbering system, such as “Bates” numbers.

C. Unless otherwise stipulated or ordered by the Court, a party may serve on any other party no more than thirty (30) interrogatories, including discrete subparts, and no more than thirty (30) document requests. Leave to serve additional discovery requests may be granted in the Court’s discretion.

D. Discovery requests and responses are not to be filed unless ordered by the Court or unless necessary for use in a proceeding. Parties may file a “notice of service” stating the date on which discovery requests or responses were served.

RULE 13
GUARDIANS AD LITEM AND ATTORNEYS AD LITEM

A. In all petitions filed for appointment of a conservator, appointment of a guardian, approval of the sale of property pursuant to TENN. CODE ANN. §34-1-116, court approval of unauthorized encroachment of funds, sales of personalty, and in all other matters relating to persons under disability, the Court may, in its discretion, appoint a Guardian ad Litem to make an investigation and file a written report with the Court.

B. In all matters wherein the appointment of a Guardian ad Litem is requested or required, counsel for the Petitioner shall advise the Court (at the time the appointment of the Guardian ad Litem is requested) of the resources available to pay the Guardian ad Litem's fees and expenses. If it appears that the Respondent's assets may be insufficient to pay the anticipated Guardian ad Litem's fees and expenses, that fact shall be made known to the Court at that time so that appointment of a pro bono Guardian ad Litem may be considered.

C. When a Guardian ad Litem is appointed, the attorney for the Petitioner shall promptly notify the Guardian ad Litem of this appointment and furnish the Guardian ad Litem an attested copy of the Order appointing the Guardian ad Litem, copies of all pleadings and appropriate documents, and any known contact information for all interested parties.

D. The Guardian ad Litem shall have the powers and fulfill the duties listed under TENN. CODE ANN. §34-1-107.

E. Pursuant to TENN. CODE ANN. §34-1-107(f), the Guardian ad Litem shall file the written report at least three (3) days before the scheduled hearing, unless waived by the Court. The Guardian ad Litem shall provide a copy to all counsel.

F. In all actions for approval of a proposed settlement involving a person with a disability, the Court shall appoint a Guardian ad Litem to investigate and to make recommendations to the Court as to the appropriateness of the proposed settlement.

G. Unless required by statute, appointment of a Guardian ad Litem may be waived for good cause shown.

H. The Guardian ad Litem is discharged pursuant to TENN. CODE ANN. §34-1-107(g) unless otherwise ordered by the Court. Either the Order

establishing the Conservatorship or the Order approving the Property Management Plan should discharge the Guardian ad Litem.

I. Attorneys ad Litem are appointed in Conservatorship cases pursuant to TENN. CODE ANN. §34-1-125. The Attorney ad Litem represents the Respondent and is specifically charged with resisting the appointment of a Conservator. In order to be paid for services rendered as Attorney ad Litem, the appointment must be made by the Court.

J. The Order establishing the Conservatorship should discharge the Attorney ad Litem, if appropriate.

RULE 14 INVENTORY

A. Decedent's Estates

1. As provided by TENN. CODE ANN. § 30-2-301, an inventory must be filed by the Personal Representative within sixty (60) days after commencement of the administration of a testate or intestate estate unless waived as hereafter provided.

2. In intestate estates and in testate estates when the will does not waive inventory, the inventory may be waived if all heirs or beneficiaries consent, provided all named heirs or beneficiaries are *sui juris*. If any heir is a minor, or a person with a disability, cannot be identified or located, declines to consent to waiver of the inventory, or if requested by an interested party, then the Personal Representative shall file an inventory.

3. The inventory should list all probate assets but exact dollar values need not be given nor must an appraisal be obtained. The Court does not require item by item listing of furniture and personal effects unless such an itemization is requested by an interested party.

4. The attorney of record is responsible for seeing that a copy of the inventory is provided to all interested parties.

B. Conservatorships & Guardianships

1. Inventories shall be filed with the Court within sixty (60) days of the appointment of the fiduciary, unless the Court otherwise orders. The inventory shall be prepared in accordance with TENN. CODE ANN. §34-1-110.

RULE 15
PROPERTY MANAGEMENT PLANS

A. Property management plans for Conservatorships and Guardianships shall be filed with the Court within sixty (60) days of the appointment of the fiduciary, unless the Court otherwise orders. The property management plan shall be prepared in accordance with TENN. CODE ANN. §34-1-115.

B. All petitions to approve property management plans shall be specially set and approved by the Court before the estate assets can be invested or expended. Once the plan is approved, any modifications to the plan must be approved by the Court.

RULE 16
ACCOUNTINGS

A. Fiduciary Accounts – Generally

All fiduciary accounts must be opened and maintained at institutions with offices located within the State of Tennessee unless otherwise provided by Court order. All accounts must be specifically titled as fiduciary accounts.

B. Decedent’s Estates

1. As provided by TENN. CODE ANN. § 30-2-601, the Personal Representative of a decedent's estate is required to make an accounting or status report with the Clerk of the Court within fifteen months from the date of qualification and annually thereafter until the estate is fully administered. For good cause shown, the Court may extend the time for filing annual or final accountings. Tennessee law provides that accountings may be waived by the Court if the decedent's will waives the requirement or if all residuary beneficiaries are *sui juris* and have, in writing, excused the Personal Representative from filing an accounting.;

2. Pursuant to the requirement of TENN. CODE ANN. § 30-2-603, a certification as to notice must be filed with the accounting and shall be signed by the attorney or Personal Representative to show that the appropriate notice was given. The Clerk audits accountings on Fridays, so the date reflected on the Certification as to Notice of Accounting must be a Friday more than five (5) days from the date of filing.

3. The Personal Representative may comply with TENN. CODE ANN. § 30-2-601(c) by e-filing separately from the accounting copies of all bank statements and supporting documentation.

4. The Personal Representative of an estate should furnish either an informal or a formal detailed accounting to residuary distributees of an estate. It is only the formal Court-approved accounting that may be waived by the Court.

5. Copies of all accountings are to be furnished to all interested parties by the attorney of record or by the Personal Representative of the estate. Creditors in an insolvent estate shall be furnished copies of all accountings.

6. Final accountings of solvent estates may be waived, and the estate may be closed on receipt and waiver.

7. In submitting accountings, the following shall apply:

a. Entries on accountings should be specific, giving date, source, and amount. For example, do not just list "Deposit", but rather show as: "12/21/22 – Regions Bank Checking Account #854321--\$721.71." Another example might be: "7/15/22 – Proceeds from Sale of 1999 Honda Accord -- \$2,500.00."

b. All assets of the estate should be reflected on the accounting; however, tangible property, such as vehicles, boats, farm equipment, etc., shall be listed separately from the monetary portion of the accounting. Tangible property need not show a dollar value although approximations are permissible. Household furniture need not be itemized unless requested by an interested party.

c. All Personal Representatives should sign the accounting; however, in case of a disagreement or if one is unable to obtain a Co-Personal Representative's signature for any reason, the other(s) should file separately. If all Personal Representatives do not sign the accounting, this fact shall be brought to the Clerk's attention and referenced by a Clerk's note on the accounting. An explanation of the facts surrounding a missing signature must accompany the accounting.

d. If an accounting on a decedent's estate is filed more than three (3) years after the opening of the estate, a notation on the accounting shall state why it is necessary to keep the estate open. An example is as follows: "A lawsuit is pending in

Chancery Court, Docket No. 85762, in which the personal representative is a plaintiff. The estate can be closed soon after disposition of that case, which we anticipate may be _____.”

e. It is preferred that items not be cumulative; however, no exception will be taken for identical monthly entries, such as: “Twelve (12) monthly encroachments of \$150.00 totaling \$1,800.00.” Interest on bank accounts may also be cumulative.

f. In order to expedite the audit and confirmation of accountings, the Court strongly urges attorneys to use accounting forms that have been approved by the Court, which from time-to-time may be updated. These forms are posted on the Probate Court Clerk’s website.

g. Accountings should cover no more than a twelve (12) month period.

h. A request for any extension to file an accounting should address all accountings then due.

C. Conservatorships & Guardianships of Minors

Guardians and Conservators of the estates of minors or persons with a disability are required to file accountings in accordance with TENN. CODE ANN. § 34-1-111 unless the accountings are expressly waived by Court order or the Court allows less frequent accountings.

D. Exceptions to Accountings

The initial hearing on the exception shall be scheduled by the Court. The Court Clerk shall mail the notices. In the event the exception cannot be resolved by agreement with the Accounting Clerk or there is a conflict with the initial hearing date see the Division preferences published by each Judge

E. Show Cause

A fiduciary’s failure to comply with statutory requirements or orders of the Court may result in a Show Cause Citation. In addition, the Court may remove the fiduciary or impose sanctions, including a finding of contempt of Court, forfeiture of earned fees, taxation of fees and costs against the defaulting party, or other appropriate remedy.

RULE 17
MONEY INVESTED WITH PROBATE COURT CLERK

A. The Probate Court Clerk will invest litigant's funds paid into the Court only if there is a court order directing it to do so. Unless an order provides otherwise, the Clerk shall determine in which institution the funds are to be invested and the nature of the investment. At the time of payment or when the order is entered, if later, it will be the duty of the attorney seeking investment of the funds to specifically call to the attention of the Clerk that the funds are to be invested.

B. If a distribution is granted, the order shall direct that the Clerk issue a check in the approved amount to the payee specifically named in the order, which should also include the payee's address. The Clerk, upon distribution of the funds held by it, shall be paid a commission equal to 5% of the income realized from the account or other amount as may be permitted by statute. If funds are to be held for less than thirty days, the Clerk will deposit them in its "funds not invested account."

C. If funds on a case are to be invested, the attorney shall state it in the order and complete and submit the Investment Form provided by the Clerk's Office. The Fiduciary shall keep the Clerk informed as to changes in their contact information.

D. If the Fiduciary desires a copy of the Clerk's Accounting, the order shall direct the Clerk to provide it annually.

RULE 18
**PETITIONS FOR ELECTIVE SHARE,
HOMESTEAD AND YEAR'S SUPPORT**

A. Petitions for elective share, homestead and year's support shall be specially set for hearing and not less than ten (10) days written notice shall be given to all interested parties, stating the nature of the relief sought. See Tenn. Code Ann. §31-4-102(b). Creditors, in addition to the Personal Representative, the attorney of record, TennCare and the beneficiaries, are to be considered interested parties entitled to notice of the application and hearing if the estate is or could reasonably be expected to be insolvent.

B. In the Court's discretion, a Petition for year's support allowance may be filed and heard even if no estate has been opened, provided that all interested parties are given notice of the proceeding and it can reasonably be expected that the entire personal estate should be set aside as a year's support.

RULE 19
FEES

A. Fees in Decedents' Estates

1. The Court will set the fees of Personal Representatives and attorneys for a decedent's estate upon Petition filed by the Personal Representative. The Petition may be filed by the attorney requesting the fee if the Personal Representative fails or refuses to file the Petition.

2. If the interested parties are all *sui juris* and agree to the fees, the Court will not require a Petition for fees to be filed in the cause. Any such fee agreement should be reduced to writing and should otherwise comply with the attorney's ethical responsibilities under Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

3. Fees for Personal Representatives. Non-corporate Personal Representatives shall be allowed all necessary expenses in the care, management, and preservation of the Probate estate. Additionally, non-corporate Personal Representatives may be allowed compensation for services rendered as hereinafter provided. The fee of the non-corporate Personal Representative shall be an amount the Court determines to be fair, reasonable and appropriate under all circumstances, including (but not limited to) the size of the estate being administered, the relationship of the Personal Representative to the decedent, the comparative involvement of the attorney for the estate and the non-corporate Personal Representative, the complexity of the matter, the cooperation or lack thereof by the beneficiary or heirs.

If the value of the decedent's gross estate (including real estate to the extent that services were rendered in connection with the real estate), plus any income earned during the administration of the estate, is under \$50,000.00, a minimum fee of \$500.00 shall be considered reasonable. For estates totaling over \$50,000.00, the fee may be graduated as determined by the following guidelines:

<u>VALUE OF ESTATE</u>		<u>FEE</u>
First	\$100,000.00	1.00% to 2.00%
Next	\$900,000.00	0.50% to 1.00%
Over	\$1,000,000.00	0.25% to 0.50%

These guidelines reflect what may be considered to be reasonable, but are not binding on the Court. If there are two or more Personal Representatives, the Court shall apportion such compensation pursuant to any agreement between them. If there is no such agreement, the Court shall apportion such compensation according to the services actually rendered by each.

4. Fees for Attorneys. Tenn.S.Ct.R. 8, RPC 1.5 governs the reasonableness of an attorney's fee. In determining the amount of the attorney's compensation, the Court will consider the amount and character of the services rendered, the complexity of the estate, the time and effort involved, the character and importance of the litigation, the amount of money or value of property involved, the professional skill and experience required, and the expertise and standing of the attorney.

In setting fees for either the Personal Representatives or attorneys, the Court may consider any extraordinary services, including but not limited to sales or mortgages of real or personal property, lengthy or contested litigation involving claims against the estate, complex tax returns or audits by any federal or state agencies, the managing or selling of the decedent's business, will contests, or such other litigation or special services that may be necessary.

5. When the attorney of record also serves as Personal Representative, only one fee shall be allowed, but the Court in setting same shall take into consideration all of the services rendered.

6. Counsel for the Petitioner shall give a copy of any petition that requests compensation pursuant to this Rule to all interested parties. Additionally, counsel for the Petitioner shall give the interested parties not less than ten days written notice of the date and time the Petition is to be heard. Counsel for the Petitioner shall give this notice to creditors of the estate if the estate is insolvent.

7. The Petition requesting fees for attorneys or Personal Representatives shall include the following:

- a. A description of the assets of the estate.
- b. A description of the services rendered.
- c. The value of the gross estate.
- d. The value of the probate estate.
- e. The amount of income earned by the estate.
- f. The amount of compensation requested.

g. A statement that all interested parties have been properly notified of the proceedings and have been furnished with a copy of the Petition.

h. Any other relevant information that may be relevant pursuant to Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

8. All fee petitions filed either by the attorney or Personal Representative shall be specially set, as stated at Rule 6(A)(12). Proper notice shall be given to all interested parties.

9. When applicable, the attorney or Personal Representative shall be prepared to provide the Court with copies of the United States Estate Tax Return at the hearing on the specially set fee applications, but same shall not be filed of record.

10. Except for good cause shown, Petitions for fees of Personal Representatives of estates and their attorneys will not be heard until the administration of the estate is substantially complete.

B. Fees in Conservatorships, Guardianships, and Other Matters

1. The Court shall set the fees of fiduciaries, attorneys, and court-appointed officials in Conservatorships, Guardianships, and other matters. Fee applications should be reasonable and otherwise in accordance with Rule 1.5 of the Tennessee Rules of Professional Conduct as set forth in Tennessee Supreme Court Rule 8.

2. The Court may set fees upon the confirmation of accountings, encroachments against guardianships and conservatorships, and other routine matters without the necessity of a written Petition.

3. The Court shall set fees that it deems reasonable under the totality of the circumstances, including the consideration of the non-monetary value of the services rendered for the benefit of the ward.

4. When applicable, attorneys are expected to discuss with the client the amount of the requested fee prior to the submission of the fee request.

5. In Conservatorships and Guardianships, fees and court costs shall be allocated in accordance with Tenn. Code Ann. §34-1-114.

RULE 20
PETITIONS TO CLOSE OR TERMINATE CASES

A. Decedent's Estates

1. To close an estate, whether or not a final accounting is waived, the Personal Representative, after the period for creditors to file claims against the estate has expired, shall file a Petition with the Clerk of the Court stating substantially the following facts, together with a qualification or explanation if any statement is not accurate:

a. That the Personal Representative has properly administered the estate.

b. That the Personal Representative has timely filed the affidavits regarding Notice to TennCare and Notice to Beneficiaries, as required under TENN. CODE ANN. § 30-2-301. If notice was not timely given or if the required affidavits were not timely filed, the Petition to close the estate must specifically reflect that the estate was properly administered except that the Personal Representative failed to give timely notice or failed to file the required affidavits timely, as the case may be.

c. That the Personal Representative has paid or settled all claims that were lawfully presented and that written satisfaction of all claims is attached or filed in the cause (or if the estate has been declared insolvent, that the estate has been distributed in accordance with the Plan of Distribution).

d. That the Personal Representative has paid or has set aside funds to pay all expenses of administration, including bond premiums and Court costs.

e. That, consistent with all of the requirements of TENN. CODE ANN. § 30-2-306, the Personal Representative has mailed or delivered a copy of the published notice of the requirement to file claims to the creditors of the decedent who were known to or reasonably ascertainable by the Personal Representative.

f. For decedents dying on or before December 31, 2015, that the Personal Representative has filed in the cause the final receipt and release from the Tennessee Department of Revenue evidencing payment of all Tennessee inheritance and/or estate tax due from the estate, or, in the alternative, a non-taxable certificate. (Note: In lieu of this statement, if the gross estate is less than \$100,000 in value and if decedent made no gifts during decedent's lifetime with a value exceeding the statutory

exclusion, the Petition may contain a statement that the court has waived, or is requested to waive, filing of the inheritance tax return under TENN. CODE. ANN. § 67-8-409.) For decedents dying on or after January 1, 2016, a Tennessee inheritance tax clearance letter or affidavit is not required. NOTE: This rule does NOT affect the fiduciary's responsibility to comply with Federal estate tax laws.

g. That the Personal Representative has distributed the estate according to the will and has obtained and filed receipts for specific bequests or, if the decedent did not leave a will, has distributed the estate according to the laws of intestate succession.

h. That the Personal Representative has complied with TENN. CODE ANN. § 30-2-301 requiring a copy of the will or appropriate portion thereof to be furnished to legatees or devisees under the will or, in case of an intestate estate, that a copy of the Letters of Administration has been sent to the distributees.

i. Whether any residuary beneficiary is under a disability.

j. That a receipt and waiver from each residuary beneficiary is attached in which each residuary distributee acknowledges that the estate has been properly distributed to him or her and that the statement is filed in lieu of a more detailed accounting. Pursuant to Tenn. Code Ann. §30-2-707, receipts and waivers are to be executed under penalty of perjury or notarized.

k. The Petition to close a decedent's estate shall include a release from the Bureau of TennCare or, in the alternative, a statement that the decedent was under age 55 at the time of death.

2. The order closing the estate shall release the surety on the fiduciary's bond, if applicable. The attorney of record shall provide a copy of the order to the agent of the bond company that issued the bond.

B. Conservatorships

1. A Conservatorship may be terminated or the duties of the conservator may be modified in accordance with Tenn. Code Ann. §34-3-108 (Discharge; modification of duties).

2. Upon the termination of Conservatorships by Court order or due to the death of the Respondent, the fiduciary shall file a preliminary

final accounting within one hundred twenty (120) days. The fiduciary and the bond shall be released upon confirmation of the final accounting.

C. Guardianships of Minors

1. Before final distribution of guardianship funds to a ward who has reached age 18, the ward shall testify in open court. If a petition to continue the guardianship is filed, the Court may extend the guardianship pursuant to Tenn. Code Ann. §34-2-106. Additional factors which the Court may consider in determining whether to continue the guardianship beyond the ward's 18th birthday may include whether the ward has completed high school or commenced further education in college, trade, or vocational school.

2. A final accounting is required to be filed, which shall have attached a signed receipt from the ward, executed in the presence of a Notary Public or under penalty of perjury.

**RULE 21
ORDERS**

A. Orders should enumerate each of the findings of fact and the conclusions of law made by the Court.

B. As directed by the Court, counsel shall prepare a proposed order and submit to all counsel for approval. Counsel shall present orders to the Court within seven (7) days after the matter is decided, unless the Court grants additional time. In the event of a disagreement between counsel regarding the contents of the order, counsel for each party shall prepare such order as is appropriate, and each shall submit same to the Court. A disagreement as to the wording of an order shall not excuse failure to timely submit same to the Court.

C. The following orders may be left with a Judge's assistant for submission to the Judge:

1. Orders disposing of claims or exceptions to claims.
2. Orders substituting counsel.
3. Consent orders.
4. Orders appointing a Guardian ad Litem or Attorney ad Litem, and Orders re-appointing a Guardian ad Litem when a subsequent matter necessitates re-appointment.
5. Orders setting the date for a hearing when the Court has provided such date.

RULE 22
RESTRAINING ORDERS

Proposed restraining orders shall be prepared by counsel prior to submitting the request for relief to the Court. The restraining order shall provide for the setting of a bond as a condition to the entry of the restraining order. The restraining order shall further provide for the setting of a hearing for temporary injunction and shall provide a place thereon for the Court to set a date, time, and location for such a hearing. Requests for extraordinary relief must comply in all respects with Tenn. R. Civ. P. 65.

RULE 23
JURY TRIALS

A. Whenever a pleading demanding a jury is filed, the attorney shall note on the first page of the pleading “Jury Demanded,” and shall bring the jury demand to the attention of the clerk.

B. The Tennessee Rules of Civil Procedure govern the timing of making a jury demand, the specification of issues, and waiver, among other things. Counsel are to follow said rules.

C. The Court may, in its discretion, require attorneys in cases to be tried to a jury to submit to the Court issues of law and disputed issues of fact at least ten days before the beginning of the trial.

D. The Court may require attorneys to pre-mark exhibits in accordance with a timeline established by the Court. At trial attorneys are to have enough copies of exhibits for the Court and for each juror.

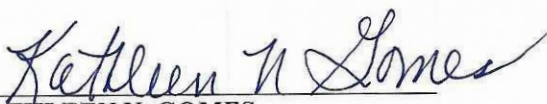
E. If a party requests that the Court give special instructions to the jury, the party must submit such proposed instructions to the Court at least fifteen days before trial or by such other time set by the Court.


RULE 24
WILL CONTESTS

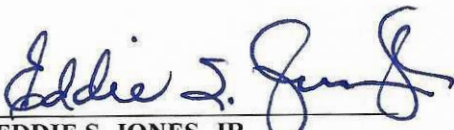
A. No will contest may proceed without compliance with Tenn. Code Ann. § 32-4-101 *et seq.*

B. Within sixty days of the filing of a will contest, counsel shall submit either a proposed or an agreed scheduling order.

These Local Rules shall be effective the 1st day of September, 2024.


KATHLEEN N. GOMES,
JUDGE OF DIVISION ONE


JOE TOWNSEND,
JUDGE OF DIVISION TWO


EDDIE S. JONES, JR.,
CLERK OF THE PROBATE COURT

APPENDIX

[November 8, 2022, Shelby County Attorney Letter with Attachments pertaining to Probate Court Jurisdiction]



Shelby County Government

LEE HARRIS
MAYOR

MARLINEE C. IVERSON
COUNTY ATTORNEY

November 8, 2022

Hon. Joe Townsend
Shelby County Probate Judge, Division II
140 Adams Ave.
Memphis, TN 38103

Re: Shelby County Probate Court Jurisdiction

Honorable Judge Townsend,

You requested assistance from this Office to address whether the Probate Court has jurisdiction over fraud allegations on matters brought before the Court. The Shelby County Probate Court powers and jurisdiction is found in the Shelby County Code of Ordinances, Chapter 10, Article IV.¹ Tennessee Code Annotated §§ 16-16-107, 16-16-109, 16-16-201(a), 32-4-101, and 32-4-109.

The Probate Court has the authority to hear any contests, including fraud, in all probate matters as conferred by the Public Acts of 1870, the subsequent amended Public and Private Acts, Tenn. Code Ann., and County Code of Ordinances. *See In re Estate of Brock*, 536 S.W. 3d 409, 419 (Tenn. 2017). For your convenience, I have attached the County Code of Ordinances, Chapter 10, Art. IV along with the relevant scans of all Public and Private Acts pertaining to the Probate Court. I have additionally attached the relevant Tenn. Code Ann. statutes. Prior T.C.A. versions also accompany each statute.

I hope you find this material informative. If you have any questions, please do not hesitate to contact me.

Regards,

Megan J. Smith
Chief Administrative Attorney

¹ See https://library.municode.com/tn/shelby_county/codes/code_of_ordinances.

ARTICLE IV. PROBATE COURT AND COURT CLERK ¹

DIVISION 1. GENERALLY

Secs. 10-221—10-240. Reserved.

DIVISION 2. FIRST DIVISION CREATED; CLERK; SHERIFF

Sec. 10-241. Established; judge generally.

- (a) There is hereby established in the county a court of record to be called the probate court of the county, to consist of one judge, who shall be elected by the qualified voters of the county on the first Thursday in August 1870. The qualifications and term of office of the judge shall be the same as prescribed by law in reference to circuit judges in this state.
- (b) Whenever a vacancy shall occur in the office of judge of the probate court, whether by death, resignation, removal or otherwise, the vacancy in such office shall be filled in accordance with state law.

(Code 1992, § 9-126; Pub. Acts 1870, ch. 86, § 1; Priv. Acts 1935, ch. 178, § 1)

Sec. 10-242. General jurisdiction.

The probate court shall have original jurisdiction of all matters of probate, the administration of estates and orphans' business, embracing all of the subjects and powers enumerated in and conferred by T.C.A. §§ 16-16-107, 16-16-109, 16-16-110, 16-16-114 and 16-16-115, and concurrent jurisdiction with the chancery courts of the county over the persons and estates of idiots, lunatics, and other persons of unsound mind; and of proceedings for the partition or sale of estates by personal representatives, guardians, heirs, or tenants in common, and for the sale of land at the instance of creditors of the decedent, if the personal property is insufficient to satisfy the debts of the estate; to remove the disabilities of minors; and it is hereby vested with all the powers of a chancery court touching these matters. The judge of the probate court is also hereby vested with all the powers conferred by law upon judges of the inferior courts in this state. From the judgment of the probate court, an appeal shall lie directly to the court of appeals or supreme court of this state, as the case may be.

(Code 1992, § 9-127; Pub. Acts 1870, ch. 86, § 2(a); Priv. Acts 1923, ch. 163, § 1)

State law reference(s)—Appeal to appellate court, T.C.A. § 27-4-102; partition suits, T.C.A. § 29-27-106; changing names, T.C.A. § 29-8-101 et seq.

¹State law reference(s)—Probate of wills, T.C.A. § 32-2-101 et seq.; residential treatment (commitments) jurisdiction, T.C.A. § 33-3-603; vacancy in office of county judge, T.C.A. § 17-1-303; fees for particular services, T.C.A. § 8-21-401.

Sec. 10-243. Removal of minor's disabilities.

The probate court shall have and is hereby granted concurrent jurisdiction with the chancery court of the county in respect of the removal of the disabilities of minority.

(Code 1992, § 9-131; Pub. Acts 1870, ch. 86, § 2(f); Priv. Acts 1941, ch. 241, § 1)

Sec. 10-244. Contempt of court.

The probate court of the county is hereby empowered to impose the same punishments for contempt of court that the circuit and chancery courts of this state are empowered to impose for contempt of court.

(Code 1992, § 9-133; Pub. Acts 1870, ch. 86, § 2(h); Priv. Acts 1953, ch. 447, § 1)

State law reference(s)—Contempt of court, T.C.A. § 29-9-101 et seq.

Sec. 10-245. Correction of errors, omissions; certain concurrent jurisdiction.

- (a) The judge of the probate court is hereby vested with the authority to correct all errors and omissions made in the records of the county court clerk of the county and particularly with respect to errors and omissions which relate to marriage licenses.
- (b) The probate court shall have and is hereby granted concurrent jurisdiction with the chancery courts to construe and interpret wills; to entertain proceedings to reopen records made by guardians and conservators and determine upon proof any balance due by them; to determine controverted and disputed issues in cases involving executors, guardians and conservators, and to determine all matters related thereto; and to determine title to real property involved in estates.

(Code 1992, § 9-134; Pub. Acts 1870, ch. 86, § 2(f); Priv. Acts 1955, ch. 317, § 1; Priv. Acts 1985, ch. 28, § 1)

State law reference(s)—Similar provisions, T.C.A. § 16-11-111; dower abolished, T.C.A. § 31-2-102.

Sec. 10-246. Clerk; deputy clerks; dates and times of court; duty of sheriff.

- (a) The office of the clerk of the probate court of the county is hereby created.
- (b) At the general election to be held on the first Thursday in August 1962, and every four years thereafter, a clerk of the probate court of the county shall be elected for a term of four years.
- (c) Such deputy clerks and assistants to the clerk as may be necessary for the proper operation and administration of the duties of the office of clerk of the probate court of the county shall be appointed and their compensation fixed in the same manner as is provided by law for the appointment and the fixing of compensation by deputy probate court clerks upon petition by the clerk to the judge of the probate court.
- (d) The clerk of the court and his deputies assigned thereto shall have concurrent authority with the judge to issue warrants and other process and writ, except those which are required by law to be issued only upon the fiat of a judicial officer.
- (e) The terms of the probate court shall be held on the first Monday of every month and shall continue until the business of the term is finished; but the judge, or the clerk in his absence, may adjourn the court over to a subsequent day of the term, or until the first day of the next term, and the court may sit upon its own adjournments.
- (f) The county sheriff shall furnish a deputy to attend the sittings of the court.

-
- (40) For issuing and entering order of publication in such causes 7.00
 - (41) For filing each amended petition in such causes 10.00
 - (42) For entering order appointing guardian ad litem in such causes 12.00
 - (43) For entering final order in each of such causes 12.00

(b) The clerk shall collect a sheriff's fee for each additional defendant in proceedings to sell real estate.

(Code 1992, § 9-137; Pub. Acts 1980, ch. 250, § 1; Ord. No. 190, 9-8-1997)

Notes:

1. Prior fee schedules: ch. 223, Priv. Acts 1959; ch. 236, Priv. Acts 1967.

2. Ord. No. 190 (9-8-1997) ratified ch. 384, Public Acts 1997.

State law reference(s)—Fees for particular services, T.C.A. § 8-21-401.

Secs. 10-249—10-270. Reserved.

DIVISION 3. SECOND DIVISION ADDED; CLERK; SHERIFF

Sec. 10-271. Divisions 1 and 2 designated.

There is hereby created and established a second division of the probate court of the county. The present probate court of the county shall be known and designated as division 1 of the Probate Court of Shelby County, and the judge of such court shall be known and designated as the judge of division 1. The additional division of the court herein created shall be known and designated as division 2 of the Probate Court of Shelby County.

(Code 1992, § 9-151; Priv. Acts 1965, ch. 213, § 2)

Sec. 10-272. When open; jurisdiction and powers; rules.

Division 2 of the probate court of the county shall be open in accordance with state law and shall have the same jurisdiction and powers as are vested in and exercised by the present probate court of the county; and the procedure, rules of practice, and laws governing division 2 of the court herein created shall be the same as those of the present probate court of the county, except as may be legally changed.

(Code 1992, § 9-152; Priv. Acts 1965, ch. 213, § 3; Pub. Acts 1984, ch. 931, § 10)

Sec. 10-273. Election of judge.

Beginning with the regular election of county officers in the state to be held in August 1966, and from that election forward a person qualified under law shall be elected judge of division 2 of the probate court of the county for the same term of office as the judge of the present probate court of the county is elected.

(Code 1992, § 9-153; Priv. Acts 1965, ch. 213, § 4)

from and after its passage, the public welfare requiring it.
Passed July 1, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.
D. B. THOMAS,
Speaker of the Senate.

... Approved July 7, 1870.

D. W. C. SENTER,
Governor.

CHAPTER LXXXV.

AN ACT to amend Section 4,853 of the Code, and for the better Protection of Educational and Literary Assemblages.

Amendment to Code.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Section 4,853, Article IV, Chapter 8, of the Code, be so amended that the pains and penalties of said section for disturbing public worship, shall apply to any person or persons who shall wilfully disturb or disquiet an assemblage of persons met for educational or literary purposes.

Duty of Justices of the Peace.

SEC. 2. *Be it further enacted,* That it shall be the duty of the Justices of the Peace, in any civil district of the State, upon proper application by any instructor, to detail a special Police force to keep order and quiet at school exhibitions.

Special Police

SEC. 3. *Be it further enacted,* That the public welfare requires this act to take effect from and after its passage.
Passed June 29, 1870.

W. O'N. PERKINS,
Speaker of the House of Representatives.
D. B. THOMAS,
Speaker of the Senate.

Approved July 7, 1870.

D. W. C. SENTER,
Governor.

CHAPTER LXXXVI.

AN ACT to Establish the Probate Court of Shelby County.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there is hereby established in Shelby County, a Court of Record, to be called the Probate Court of Shelby County, to consist of one Judge, who shall be elected by the qualified voters of Shelby County, on the first Thursday in August, 1870. The qualifications and term of office of the said Judge, shall be the same as now prescribed by law in reference to Circuit Judges in this State.

SEC. 2. *Be it further enacted,* That the said Court shall have original jurisdiction of all matters of probate, the administration of estates and orphans' business, embracing all of the subjects and powers enumerated in and conferred by Sections 4,201, 4,203, 4,204, 4,205, and 4,208, of the Code of Tennessee, and concurrent jurisdiction with the Chancery Courts of Shelby County over the persons and estates of idiots, lunatics, and other persons of unsound mind; and of proceedings for the partition or sale of estates by personal representatives, guardians, heirs, tenants in common, joint owners or coparceners, for the sale of lands at the instance of the creditors of the descendants, if the personal property is insufficient to satisfy the debts of the estate, and for the allotment of dower; and it is hereby vested with all the powers of a Chancery Court touching these matters. The Judge of said Probate Court is also hereby vested with all the powers conferred by law upon Judges of the inferior Courts in this State. From the judgment of said Probate Court, an appeal shall lie directly to the Supreme Court of this State, and to no other Court.

SEC. 3. *Be it further enacted,* That the Clerk of the County Court of Shelby County, shall be the Clerk of the said Probate Court, and the terms of said Probate Court shall be held on the first Monday of each and every month, and shall continue until the business of the term is finished; but the Judge, or the Clerk, in his absence, may adjourn the Court over to a subsequent day of the term, or until the first day of the next term, and the said Court may sit upon its own adjournments.

The Sheriff of Shelby County shall furnish a deputy to attend the sittings of said Court.

SEC. 4. *Be it further enacted,* That the records of the late County Court of Shelby County, and of the present

total number of positions to which the corresponding district attorney general is entitled and nothing in this section shall be construed as creating any assistant positions in excess of such number.

SECTION 9.

(a) The judges in each judicial district shall assemble within ten (10) days after the effective date of this Act, at a time and place and upon a date designated by the senior judge, for the purpose of selecting a presiding judge of the district.

(b) Each presiding judge initially elected shall serve until September 1, 1985. During the month of August 1985 and in August of each succeeding year, the judges within each district shall assemble at the call of the presiding judge and select a successor to such presiding judge who shall serve until September 1, 1986 and until September 1 of each succeeding year. A presiding judge shall be eligible to succeed himself one (1) time. If upon any selection date the judges in any district fail to choose or are unable to agree upon the selection of a presiding judge, the chief justice of the Supreme Court shall designate one (1) of their number to serve.

(c) It shall be the duty of the presiding judge to:

(1) Reduce docket delays and hold congestion to a minimum.

(2) Seek and maintain an equitable distribution of the workload and an equal sharing of the bench and chambers time necessary to dispose of the business of the district.

(3) Promote the orderly and efficient administration of justice within the district.

(4) Take immediate and affirmative action to correct or alleviate any caseload imbalance, or any condition adversely affecting the administration of justice within his or her district.

(5) To effectuate the above duties, the presiding judge may assign cases to judges and chancellors within his or her district. In assigning cases, the presiding judge shall, whenever possible and not detrimental to the orderly and efficient administration of justice, give due regard to the court upon which the judge or chancellor serves, the judge's or chancellor's particular background, experience and preference and economy of judicial travel time.

(d) If a presiding judge finds that he or she is unable to correct a caseload imbalance or reduce docket delays utilizing the available judges within his or her district, it shall be the affirmative duty of such presiding judge to contact other presiding judges and request assistance or contact the Supreme Court and request assistance pursuant to Tennessee Code Annotated, Section 16-3-502.

(e) This Act shall not be construed as altering or modifying any law concerning interchange by agreement.

SECTION 10. Court shall be held within each judicial district at such times and on such dates as the judges thereof shall fix by rule. Court shall be held in each county within the district as often as is necessary to dispose of the business of the court. Not less than thirty (30) days prior to such rule taking effect, such rule shall be published and circulated to the practicing bar, and filed with the executive secretary of the Supreme Court. Terms of court are abolished and the minutes of all courts shall remain open continuously. Any reference in Tennessee Code Annotated, to the beginning of a term of court shall be deemed to be a reference to the appropriate date fixed by rule as provided by this section.

New grand juries shall be impaneled at least twice a year at times selected by the presiding judge of the district. The presiding judge within each district shall be responsible for designating the foreman and for impaneling, charging and receiving the report of the grand jury, but may designate another judge to perform these responsibilities. Provided, however, in those districts in which there is a criminal court judge or judges, such criminal court judge(s) shall perform the duties pertaining to the grand jury assigned to the presiding judge by this paragraph.

SECTION 11. Uniform rules of practice may be promulgated in each district by the judges thereof. Such rules shall be consistent with the statutory law, the Rules of the Supreme Court and the Rules of Criminal and Civil Procedure. The judges within a district may, by rule, designate courts or parts of a court that will be primarily responsible for hearing certain types of cases or cases dealing with certain areas of the law. Not less than thirty (30) days prior to such rules taking effect, copies of such rules shall be published and circulated to the practicing bar, and filed with the executive secretary of the Supreme Court.

SECTION 12.

(a) Where the provisions of Section 6 of this Act require the election of an additional judge in a judicial district in either 1986, 1988, or 1990, the presiding judge of the district shall notify the judicial council in writing of his or her recommendation as to whether the additional judge will be a circuit court judge, criminal court judge or chancellor and of the part of court such judge or chancellor will serve. Such recommendation shall be made by January 1 of the year in which the additional judge is to be elected and shall be made only after consultation with all other trial level judges in the district, all local bar associations in the district and any other person or group with an interest in the recommendation.

(b) The judicial council shall have thirty (30) days from receipt of such a written recommendation to approve or reject it; provided, the recommendation shall stand approved unless rejected by a two-thirds (2/3) vote of the entire council. No recommendation shall be rejected except following a public hearing of the council held upon ten (10) days advance notice to the presiding judge who made the recommendation and to the

hereunder a second time or oftener, so that the entire amount issued shall not exceed the Six Thousand (\$6,000.00) Dollars in bonds herein authorized.

Tax Levy

SEC. 7. *Be it further enacted*, That said Board of Mayor and Aldermen, when said bonds or any part thereof are issued, shall levy a tax on all taxable property within the corporate limits of said town, sufficient to pay the annual interest on said bonds, and to create a sinking fund for their retirement at maturity; provided, however, that in the levying of said taxes they shall not levy a tax rate exceeding One (\$1.00) Dollar on each One Hundred (\$100.00) Dollars worth of taxable property in said corporation for any one year for the purpose of raising the interest and sinking fund for these said bonds.

SEC. 8. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be and the same are hereby repealed, and that this Act take effect from and after its passage, the public welfare requiring it.

Passed February 15, 1923.

F. S. HALL,
Speaker of the House of Representatives.

EUGENE J. BRYAN,
Speaker of the Senate.

Approved March 8, 1923.

AUSTIN PEAY,
Governor.

CHAPTER NO. 163.

HOUSE BILL No. 345.

(By Messrs. Shea, Griffin, Bejach, Hamner and Owen.)

AN ACT to amend Section 2 of Chapter 86 of the Acts of the General Assembly of the State of Tennessee for the year 1870, entitled "An Act to establish the Probate Court of Shelby County," by conferring upon said Court concurrent jurisdiction with the Chancery Court of Shelby County to remove the disability of minority.

SECTION 1 *Be it enacted by the General Assembly of the State of Tennessee*, That Section 2 of Chapter 86 of the Acts of the General Assembly of the State of Tennessee for the year 1870, be amended by adding after the word "dower" at the end of line fourteen of said Section 2, the following, "to remove the disabilities of minority."

SEC. 2. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

SEC. 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed February 12, 1923.

F. S. HALL,
Speaker of the House of Representatives.

EUGENE J. BRYAN,
Speaker of the Senate

Approved March 10, 1923.

AUSTIN PEAY,
Governor.

provide the method of filling vacancies in the office of Judge of the Probate Court of Shelby County.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee, That Section 1 of Chapter 86 of the Acts of the General Assembly of 1870 be and the same is hereby amended by adding thereto the following to-wit:*

Whenever a vacancy shall occur in the office of Judge of said Probate Court, whether by death, resignation, removal or otherwise, the vacancy in such office shall be filled by the qualified voters of Shelby County at the next succeeding general election, for any of the County officers, occurring more than thirty days after the happening of the vacancy; and in the meantime, the Governor of the State shall appoint a person, learned in the law and otherwise legally qualified, who shall discharge the duties of said office until a successor shall be elected and qualified. Such appointee shall receive the same compensation which would have been payable to his predecessor had such vacancy not occurred.

SEC. 2. *Be it further enacted, That all Acts and parts of Acts in conflict herewith be and the same are hereby repealed and that this Act take effect and be in force from and after its passage, the public welfare requiring it.*

Passed February 19, 1935.

W. P. MOSS,
Speaker of the Senate.

WALTER M. HAYNES,
Speaker of the House of Representatives.

Approved February 20, 1935.

HILL McALISTER,
Governor.

CHAPTER 179

SENATE BILL No. 245

(By Shelby Delegation.)

A BILL to be entitled, An Act to amend Section 2 of Chapter 86 of the Acts of the General Assembly of the State of Tennessee for the year 1870, entitled "An Act to establish the Probate Court of Shelby County", by conferring upon said court jurisdiction to enforce collection of balance found against guardians and compel compliance with orders by process for contempt.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee, That Section 2 of Chapter 86 of the General Assembly of Tennessee for the year 1870, entitled "An Act to establish the Probate Court of Shelby County," be amended by adding at the end of said Section the following: "After the settlement of a guardian's account, the Court may compel the guardian to pay into the office of the Clerk the balance found against him, and may upon motion of the Clerk or any interested party, after twenty days notice to the guardian, award summarily an execution against such guardian and his sureties for the amount of said balance as in case of a judgment at law; and when any specific thing is to be done, the Probate Court may compel the guardian, by an order, to perform it, and by process of contempt in case of refusal."*

SEC. 2. *Be it further enacted, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.*

SEC. 3. *Be it further enacted, That this Act take*

CHAPTER NO. 317

SENATE BILL No. 704

(By Shelby Delegation)

AN ACT to amend AN ACT entitled: "AN ACT to establish the Probate Court of Shelby County", being Chapter 86 of the Acts of the General Assembly of 1870, and all Acts amendatory thereto, so as to allow the Judge of the Probate Court of Shelby County to correct errors and omissions of certain records.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That Chapter 86 of the Acts of the General Assembly of 1870, the caption of which is set forth in the caption of this Act, and all amendatory acts thereto, be and the same is hereby amended by adding a new sentence to Section IV thereof to read as follows:

"The Judge of said Probate Court is hereby vested with the authority to correct all errors and omissions made in the records of the County Court Clerk of Shelby County and particularly with respect to errors and omissions which relate to marriage licenses."

SECTION 2. *Be it further enacted*, That this Act shall become effective when the same shall have been approved by the Quarterly County Court of any County to which it may apply by a vote of not less than two-thirds of the members of said Court, such approval to be made by said Court within 60 days after the sine die adjournment of the General Assembly of the State of Tennessee for the year 1955, the public welfare requiring its becoming effective at that time, and not before such approval. The approval or non-approval of this Act by the said Quarterly County Court shall be certified by the

Chairman of said Quarterly County Court to the Secretary of State.

Passed: March 10, 1955.

JARED MADDUX,
Speaker of the Senate.

JAMES L. BOMAR,
Speaker of the House of Representatives.

Approved: March 17, 1955.

FRANK G. CLEMENT,
Governor.

This is to certify that according to the official records on file in this office, Senate Bill Number 704, which is Chapter Number 317 of the Private Acts of 1955, was properly ratified and approved and is therefore operative and in effect in accordance with its provisions.

G. EDWARD FRIAR,
Secretary of State.

CHAPTER NO. 318

SENATE BILL No. 738

(By Shelby Delegation)

AN ACT to amend Chapter 11 of the Acts of the General Assembly of the State of Tennessee for the year 1879 entitled: "A Bill to establish Taxing Districts in this State and to provide the means of local government for the same", and all Acts amendatory thereof, constituting the present Charter of the City of Memphis, so as to increase the salary of the City Tax Assessor of the City of Memphis.

Passed: March 11, 1965.

WILLIAM L. BARRY,
Speaker of the House of Representatives.

JARED MADDUX,
Speaker of the Senate.

Approved: March 25, 1965

FRANK G. CLEMENT,
Governor.

This is to certify that according to the official records on file in this office, House Bill No. 149, which is Chapter No. 212 of the Private Acts of 1965, was properly ratified and approved and is therefore operative and in effect in accordance with its provisions.

JOE C. CARR,
Secretary of State.

CHAPTER NO. 213

HOUSE BILL No. 473

(By Fargarson, Spruill, Stanton, Farmer, Smith, McNeil, Mrs. Strong, Williams, Willis, Gillock, Burch, Brode, Maxwell)

AN ACT to amend Chapter 86 of the Acts of The General Assembly of the State of Tennessee for the year 1870, entitled "AN ACT to establish the Probate Court of Shelby County," and all Acts amendatory thereof, to create and establish another Division of the Probate Court of Shelby County, and to reorganize said Court.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Chapter 86 of the Acts of the General Assembly of the State of

Tennessee for the year 1870 entitled "AN ACT to establish the Probate Court of Shelby County," and all Acts amendatory thereof, be and are hereby amended as hereinafter set forth:

SECTION 2. *Be it further enacted,* That there is hereby created and established on, from and after September 1, 1966, another Division of the Probate Court of Shelby County, Tennessee. The present Probate Court of Shelby County shall be known and designated as Division One of the Probate Court of Shelby County, and the Judge of said Court shall be known and designated as the Judge of Division One. The said additional Division of said Court herein created shall be known and designated as Division Two of the Probate Court of Shelby County, Tennessee.

SECTION 3. *Be it further enacted,* That the said Division Two of the Probate Court of Shelby County shall have the same terms, and the same jurisdiction and powers as are now vested in and exercised by the present Probate Court of Shelby County; and the procedure, rules of practice, and laws governing the said Division Two of the said Court herein created shall be the same as those of the present Probate Court of Shelby County, except as may be hereafter legally changed.

The said Divisions of the Probate Court of Shelby County shall regulate their own sessions, and sit upon their own adjournments.

SECTION 4. *Be it further enacted,* That at the next regular election of County Officers in the State to be held in August, 1966, a person qualified under the law shall be elected Judge of said Division Two of the Probate Court of Shelby County for a term of eight years beginning September 1, 1966, and until

APPROVED this 26th day of March 19 85

Carroll Alexander

GOVERNOR

CHAPTER NO. 28

HOUSE BILL NO. 349

By Turner, C. (Shelby)

Substituted for: Senate Bill No. 357

By Kyle

AN ACT to amend Chapter 86 of the Acts of 1870, Second Session as amended, by conferring upon the Probate Court of Shelby County concurrent jurisdiction with the chancery courts to construe and interpret wills, to entertain proceedings to re-open records made by guardians and conservators and determine upon proof any balance due to them; to determine controverted and disputed issues in cases involving executors, guardians and conservators and to determine all matters related thereto; and to determine title to real property involved in estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 86 of the Acts of 1870, Second Session, as amended, is amended by adding the following language at the end of Section 2:

The probate court shall have and is hereby granted concurrent jurisdiction with the chancery courts to construe and interpret wills; to entertain proceedings to reopen records made by guardians and conservators and determine upon proof any balance due by them; to determine controverted and disputed issues in cases involving executors, guardians and conservators, and to determine all matters related thereto; and to determine title to real property involved in estates.

SECTION 2. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Shelby County before August 30, 1985. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by him to the Secretary of State.

SECTION 3. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 2.

PASSED: March 21, 1985

Ned R. McWhorter

SPEAKER OF THE HOUSE OF REPRESENTATIVES

Jim McMillin

SPEAKER OF THE SENATE

APPROVED this 26th day of March 19 85

Carroll Alexander

GOVERNOR

CHAPTER NO. 29

HOUSE BILL NO. 689

By Gafford

Substituted for: Senate Bill No. 699

By Lashlee

AN ACT to repeal Chapter 326 of the Private Acts of 1955, relative to the season on red foxes in Lawrence County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 326 of the Private Acts of 1955, is repealed.

SECTION 2. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Lawrence County before October 1, 1985. Its approval or nonapproval shall be proclaimed by the presiding officer of the Lawrence County legislative body and certified by him to the Secretary of State.