

RULES OF CIRCUIT COURT

Twenty-Eighth Judicial District

of

Tennessee

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**LOCAL RULES OF PRACTICE FOR THE CIRCUIT COURT OF
THE TWENTY-EIGHTH JUDICIAL DISTRICT OF TENNESSEE, CONSISTING
OF GIBSON, CROCKETT, AND HAYWOOD COUNTIES**

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INTRODUCTORY STATEMENT

By virtue of the authority vested in the Circuit Judge of the Twenty-Eighth Judicial District of Tennessee, and for the purpose of providing uniformity of procedure in the various circuit courts of said district in conformity with the Tennessee Rules of Civil and Criminal Procedure, the following rules are hereby adopted and promulgated. These rules replace all rules previously adopted. To the extent any rule herein conflicts with the provisions of the Tennessee Rules of Civil Procedure or Criminal Procedure, the appropriate procedural rule of the Tennessee Rules of Civil Procedure or Criminal Procedure shall govern.

These local rules shall take effect immediately, however, modifications and corrections will be necessary from time to time. Anyone desiring to be personally notified of such amendments as they become necessary should notify the Circuit Judge's secretary of said desire. A form for requesting such continuing notification is attached to these rules at Appendix B.

The circuit judge may deviate from these rules to whatever extent he or she deems appropriate in order to meet the ends of justice.

RULE 1. APPLICABILITY, PURPOSE AND DEFINITIONS

1.01 Applicability:

General Applicability: Unless otherwise indicated by a particular rule, Rules 1 through 7 apply to all types of cases in the circuit court in the Twenty-Eighth Judicial District. When a rule applies only to a particular type of case, (e.g., civil cases or criminal cases), it applies to all cases of that type.

Rules Applicable to Civil Cases Only: Rules 8 through 33 pertain only to civil cases in the circuit court unless expressly stated otherwise in these rules.

Rules Applicable to Criminal Cases Only: Rules 33 through 57 pertain only to criminal cases in circuit court unless expressly stated otherwise in these rules.

1.02 **Purpose of Rules:** These rules will be construed to secure simplicity of procedure, fairness in administration and the elimination of unjustifiable expense and delay. The judge will deviate from these local rules only in exceptional cases where justice so requires.

1.03 **Definitions:** The following definitions apply to terms used in these local rules:

Clerk: The circuit court clerk, or his or her designees.

Tenn. R. Civ. P.: Tennessee Rules of Civil Procedure.

Tenn. R. Crim. P.: Tennessee Rules of Criminal Procedure.

1.04 **Citations:** These rules may be cited as "Twenty-eighth Judicial District Local Rules."

RULE 2. COURT SESSIONS AND COURTROOM PROCEDURE/ COURTROOM ATTIRE

2.01 Time of court sessions: Court Sessions in each Circuit Court term will generally be held Monday through Fridays during that court's term. The court may also convene at a given courthouse at any other time as is necessary for the hearing of causes specially set. Unless another time is specifically set by the circuit judge, all court sessions shall begin at 9:00 a.m. except that on motion and arraignment days the judge shall normally assume the bench at 8:30 a.m. for the purpose of taking announcements, accepting pleas and hearing uncontested matters. Such matters should be attended to **before** the regular opening of the session at 9:00 a.m.

2.02 Opening and closing of court: Upon the judge entering the courtroom preparatory to the formal opening of court, the sheriff or his or her designee shall call the courtroom to order, directing all in attendance to stand, whereupon all those in attendance shall rise. The sheriff or his or her designee shall then open court in substantially the following manner:

Hear Ye! Hear Ye! Hear Ye! The Circuit Court in and for _____ County, Tennessee, is now in session pursuant to adjournment, The Honorable _____ presiding. All persons having business with this court draw near, give your attention and you shall be heard. God save the United States of America, The State of Tennessee and this honorable court. Be seated please.

Whereupon the judge and all those in attendance shall be seated.

Upon the judge instructing the sheriff to adjourn court for the day, the sheriff shall direct all in attendance to stand and shall adjourn in the following manner:

This Circuit court of _____ County is now adjourned.

Upon the judge declaring a recess the sheriff shall direct all in attendance to stand and shall announce as follows:

The Circuit court is now in recess.

Upon resuming a recessed session, the sheriff shall direct all in attendance to stand and shall announce as follows:

The circuit court of _____ County is now back in session. Be seated please.

Whereupon the judge and those in the courtroom shall be seated.

2.03 General rules of conduct:

- A. All persons present in the circuit courtroom, as well as those carrying out any other activity under the authority of the Circuit Court of the Twenty-eighth Judicial District, are ordered to refrain from discriminating, harassing, intimidating or treating discourteously in any way, either by word, deed, act or omission, any person because of his or her race, religion, gender, ethnicity or for any other inappropriate reason. Anyone doing so shall be considered to be acting in contempt of court and punished to the extent legally appropriate.
- B. Rude, vulgar, profane or other inappropriate language will not be tolerated. All persons present in the circuit courtroom will behave and speak with courtesy and show respect to all others present.
- C. There shall be no smoking in the courtroom, nor shall food or drink, other than water provided by the court bailiff, be brought into the courtroom.
- D. All attorneys and court attendants shall be appropriately and professionally dressed during court sessions; male attorneys shall wear coats and ties at all times.
- E. All litigants, witnesses and spectators shall wear appropriate attire and make a clean and neat appearance.
- F. Jurors and prospective jurors are required to wear appropriate attire while performing their duties and to present a clean and neat appearance.
- G. All papers shall be handed to the judge by the sheriff or his or her designee. No attorney shall approach the bench; witness stand *or clerks station while court is in session* except with permission directed by the judge.
- H. Whenever anyone addresses the judge or is addressed by the judge, he or she shall rise and remain standing during the exchange. Attorneys are required to stand while interrogating witnesses.
- I. Whenever the judge is announcing a ruling, all persons in the courtroom shall remain seated and, if entering the courtroom, shall be seated until the Judge has finished ruling.
- J. While court is in session no one may photograph or record any proceedings without permission of the judge.

2.04 Courtroom security:

The sheriffs of Crockett, Gibson and Haywood Counties are authorized and directed to employ all lawful and constitutional means necessary to ensure the security of the courtrooms and all passages, corridors, rooms, and points of ingress and egress thereto. Each sheriff shall insure and maintain proper security for the protection of government property and the safety of the court, court personnel, attorneys and all persons in attendance thereof, whether as plaintiff, defendant, witness, or spectator.

Each sheriff may, as circumstances require in his or her discretion, establish and promulgate reasonable regulations not inconsistent with these rules for purposes of carrying out its directives including, but not limited to, the search of any and all persons seeking to enter the various courtrooms or other parts of Crockett, Gibson and Haywood County Court Buildings.

Anyone seeking to enter said courtrooms or buildings not consenting to a search of his or her person when requested by one lawfully authorized to conduct said search, shall not be admitted therein. Strip body searches are not authorized.

Only authorized personnel serving the Court shall wear side arms in the courtroom while court is in session. In the discretion of the Judge, however, persons who are legally authorized to carry firearms because of their status as full time law enforcement officials may, if allowed by the judge, wear said firearms. Otherwise, all persons must check their firearms with the court bailiff while they are in the courtroom, or with the nearest office of the sheriff.

RULE 3. ORDER OF BUSINESS

On days when no jury is to be selected, at the opening of court, orders, decrees or announcements may be presented. The court will then take up any uncontested matters. The calendar of the day shall then be called after that. Court shall convene at 8:30 a.m. on arraignment and motion days to allow such presentments.

RULE 4. APPEARANCE AND CONDUCT OF COUNSEL AND OTHER COURT PERSONNEL

1.01 Counsel of Record; Entry of Appearance: All counsel who have entered an appearance in a case will be enrolled on the docket as counsel of record. Entry of an appearance will be made in one of the following ways:

- A. a written request by counsel to the Clerk that an appearance be entered;
- B. the filing of pleadings;
- C. the filing of a formal notice of appearance;
- D. appearance as counsel at an arraignment or other hearing; or appointment by the judge.

4.02 Non-Tennessee Attorneys: A lawyer residing in a state with a rule similar to this one, who is licensed, in good standing and admitted to practice before the court in that state shall be permitted to file complaints, petitions, and any other cause in Circuit Court only upon certifying in writing on the instrument filed, before or at the filing, that such lawyer has not filed five or more such instruments, nor made five or more appearances in the courts of Tennessee within the past 12 months. In addition, a lawyer licensed to practice and in good standing in the State of Tennessee must be named as associate counsel on the certification and said Tennessee associate counsel must be an active participant in all court proceedings.

4.03 Cases in Which a Local Attorney or immediate family member is a Party: In any

action in which an attorney is a real, rather than a nominal party, that fact shall be brought to the attention of the judge by written notice, a copy of which shall be filed and delivered within thirty (30) days after the first responsive pleading in Circuit Court, or the docketing of the case in Circuit Court (whichever is sooner), and shall describe the nature of the case, state whether a jury has been demanded, and indicate whether or not the attorney-party or his family member intends to testify. The court will then forthwith decide whether or not to request that a judge from outside this circuit be designated to hear the case, and will notify counsel for the parties of the decision. Nothing herein shall prevent counsel for either party from requesting that the court obtain designation of a judge from outside if such request is made in a timely matter.

4.04 Withdrawal of Counsel: No attorney of record may withdraw in any case except on written motion and court order. All motions for leave to withdraw shall include the reasons requiring withdrawal (unless prohibited by the Code of Professional Responsibility) and the name and address of any substitute counsel. If substitute counsel has not been retained, that fact shall be set forth in the motion and the motion shall also set forth the name, address, and telephone number of the client, as well as the signature of the client approving the withdrawal.

If there is no signature of the client indicating agreement with the withdrawal, such withdrawal will only be allowed after a hearing.

A certificate of service shall notify the client of the time, date, and place of the hearing. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of an action. If withdrawal is allowed in a case in which substitute counsel has not been retained, the party will be allowed a reasonable amount of time to acquire new counsel.

4.05 Conduct of Counsel: At trial, counsel will avoid use of first names and other expressions of familiarity with adult witnesses, jurors, opposing counsel, and all other persons present. During opening statements or closing argument, no juror will be addressed individually by name.

Lawyers should request bench conferences only when necessary.

Objecting counsel will state the legal grounds for an objection without argument or discussion. There shall be no Speaking objections. Attorneys shall stand when making objections.

Attorneys will stand while examining witnesses or addressing the jury or the court.

No attorney, party or any other person who has an interest in a case set for trial will engage in any kind of conversation whatsoever with any juror serving in any court or record.

Once a juror's service is complete and he or she is excused from jury service, attorneys may interview him or her, but only consistent with Supreme Court Rule 8, E.C. 7-29, and D.R. 7-108.

4.05 (a) Standards of Intra-Professional Conduct: The following Standards of Intra-

Professional Conduct are hereby adopted as Standards which govern the conduct of counsel.

1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without notice to adversary counsel sufficient to permit response.
2. A lawyer should promptly respond to attempts by other lawyers to contact him or her, whether by telephone or correspondence.
3. A lawyer should respect his or her opponent's schedule by seeking agreement on deposition dates and court appearances (other than routine motions) rather than merely serving notice.
4. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.
5. A lawyer should not engage in intentionally discourteous behaviors for the purpose of obtaining an advantage.
6. A lawyer should never intentionally embarrass another attorney and should avoid personal criticism of him or her in the presence of his or her client or other counsel.
7. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, and never for the mere purpose of obtaining a tactical advantage. A lawyer should strive to maintain a courteous tone in correspondence, pleadings, and other written communications.
8. A lawyer should never intentionally mislead or deceive an adversary and should honor promises or commitments made.
9. A lawyer should acknowledge that the conflicts within which he or she is involved are professional and not personal and should endeavor to maintain a friendly and collegial relationship with his or her adversaries. In short, a lawyer should "leave the argument at the courtroom door."

4.06 Setting Attorney Fees: Whenever the amount of an attorney's fee is an issue, the attorney will file an affidavit setting forth an itemized statement of the services rendered, the time, a suggestion of the fee to be awarded along with a statement of other pertinent facts including but not limited to that required by D.R. 2-106 of the Code of Professional Responsibility and applicable case law, and such other information as may be requested by the court

4.07 Contacting Judge: Neither counsel nor a party to a pending action will communicate *ex parte* with the Judge before whom the matter is pending except consistent with the Code of Professional Responsibility, the Code of Judicial Ethics, and Rule 13 of the Rules of the Supreme Court of the State of Tennessee.

4.08 Conflicts of Interest: No lawyer may represent clients in circuit court whose interests are adverse to each other's. The appropriate ethical prohibitions and responses shall be fully complied with in this regard. Lawyers are expected to recognize such conflicts without having them brought to their attention and to refrain from appearing in such capacity.

RULE 5. FILING AND SERVICE OF PAPERS

5.01 Filing with the Clerk: Unless provided otherwise by law or order of the court, all papers, including pleadings, motions, and proposed judgments and orders, will be filed with, or submitted to, the Clerk. Papers should not be mailed to or left with the Judge except in the following circumstances: 1) when specifically authorized by the Judge, or 2) to provide a courtesy copy for the Judges review.

5.02 Certificate of Service: All papers must contain a certificate of service showing the date of service and the specific name or names of the person or persons served. The Clerk shall refuse to file papers without a certificate. The intent of the rule is to eliminate certificates of service that indicate service on all counsel of record.

5.03 Signature of Counsel: All pleadings, orders, briefs and other papers submitted for consideration by the court will be personally signed by at least one attorney of record in her or his individual name and will show the style and number of the case, the general nature of the paper filed, and the name, street address and telephone number of the attorney filing the pleadings, as well as the filing attorney's Tennessee Supreme Court Registration number.

RULE 6. COURT FILES C REMOVAL

6.01 Custody of the Files: The Clerk will maintain custody of all papers and records of the court. **Unless otherwise provided for, files may not be withdrawn from the clerk's office by any person at any time without prior approval of the Judge.** The clerk will furnish copies of the content of files at a reasonable cost.

6.02 Papers, documents or Files Under Seal: All files shall be available for public inspection except as specifically exempted by court order or statute. Any motion seeking such an order must contain sufficient facts to overcome the presumption in favor of disclosure.

RULE 7. MEDIA GUIDELINES

7.01 Media Access:

Coverage Generally. Media coverage of public judicial proceedings shall be allowed in accordance with the provisions of this rule. The coverage shall be subject, at all times, to the authority of the circuit judge to control the conduct of the proceedings before the court to maintain decorum and prevent distractions, to guarantee the safety of every party, witness, or juror and to ensure the fair and impartial administration of justice in the pending case.

Requests for Media Coverage. Requests by representatives of the media for such coverage must be made in writing to the circuit judge not less than two (2) business days before the proceeding is scheduled to begin. The circuit judge may waive the two-day requirement in his or her discretion.

Notification of request. Notification that the media has requested such coverage shall be provided by the clerk of the court to the attorneys of record in the case. Such notification may be waived by the judge at the clerk's request if the request is made for media coverage on all or part of a docket. If the judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called. Such continuance shall be granted, however, only if the person can show that he or she is prejudiced by the lack of notice and that there is good cause to refuse, limit, terminate or temporarily suspend such media coverage.

7.02 Definitions:

Coverage means any photographing, recording or broadcasting of a court proceeding by the media using television, radio, photographic, or recording equipment.

Media means legitimate news gathering and reporting agencies and their representatives whose function is to inform the public, or persons engaged in the preparation of educational films or recordings.

Proceeding means any trial, hearing, motion, or other matter held in open court that the public is entitled to attend.

Judge means the judge, justice, master, referee or other judicial officer who is scheduled to preside, or is presiding, over the proceeding.

Minor means any person under eighteen (18) years of age.

7.03 Prohibitions:

Minor Participants: Recording of the testimony, or the photographing, of a witness, party, or victim who is a minor is prohibited in any judicial proceeding, except when a minor is being tried for a criminal offense as an adult.

Jury Selection: All recording or photographing of jury selection is prohibited, as is photographing individual members of the jury in the court room or during court proceedings.

Jurors: No photograph or sound recording may be made in the courthouse that includes any juror or any juror's voice.

Closed Proceedings: Media coverage of proceedings which are otherwise closed to the public by law is prohibited.

Conferences of Counsel: There shall be no audio pickup, recording, broadcast, or video close-up of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client or between counsel and the judge held at the bench or in chambers.

7.04 Limitations:

Discretion of Circuit Judge: The circuit judge has the discretion to refuse, limit, terminate, or temporarily suspend media coverage of an entire case or portions thereof, in order to control the conduct of the proceedings before the court, to maintain decorum, to prevent distractions, to guarantee the safety of any party, witness, or juror or to ensure the fair administration of justice in the pending cause. Such exercise of the judge's discretion shall be made following the procedures established hereafter.

Evidentiary Hearing: Before denying, limiting, suspending, or terminating media coverage, the judge shall hold an evidentiary hearing if such a hearing will not delay or disrupt the judicial proceeding. In the event that an evidentiary hearing is not possible, affidavits may be used. The burden of proof shall be on the party seeking limits on media coverage. Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit. Any finding that media coverage should be denied, limited, suspended or terminated must be supported by substantial evidence that at least one of the four interests listed herein above is involved and that such denial, limitation, suspension, or termination is necessary to adequately reach an accommodation of such interest.

The judge shall enter written findings of fact detailing the substantial evidence required to support his or her order.

7.05 Appellate Review: Appellate review of a judge's decision to terminate, suspend, limit, or exclude media coverage shall be in accordance with Rule 10 of the Tennessee Rules of Appellate Procedure.

7.06 Equipment and Personnel:

Limitations: At least one, but no more than two television cameras with one operator each, two still photographers using not more than two cameras each, and one audio system for radio broadcast purposes, will be permitted in any judicial proceeding.

Pooling arrangements: When more than one request for media coverage is made, the media shall select a representative to serve as a liaison and be responsible for arranging pooling among the media that may be required by these limitations in equipment and personnel.

The identity of the person selected, including name, business address, phone and fax number, shall be filed with the clerk of the court in which the proceeding is to be held.

Pooling arrangements shall be reached when the court is not in session and shall be the sole responsibility of the media without calling upon the judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. Such pooling arrangements shall include the designation of pool operators, procedures for cost sharing, access to and dissemination of material, and selection of a pool representative if appropriate. In the absence of advance media agreement on disputed equipment or personnel issues, the judge may exclude all contesting media personnel from a proceeding.

Personal Recorders: Media personnel and others may use hand-held cassette tape recorders

that are no more sensitive than the human ear, **but only after having received prior permission by the judge**. Such recorders are to be used for the making of sound recordings as personal notes of the proceedings, and shall not be used for any other purpose, including broadcast. Usage shall not be obtrusive or distracting, and no change of tape shall be made during court sessions if said change delays or disturbs proceedings.

Print Media: This rule (7.06) does not prohibit or limit coverage of a proceeding by a news reporter or other person who is not using a camera or electronic equipment.

7.07 Sound and Light Criteria

Distractions: Only television, photographic and audio equipment which does not produce distracting sound or light shall be employed to cover proceedings in a court facility. Signal lights or devices to show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden light changes shall not be used.

Courtroom Light Source: If possible, lighting for all purposes shall be accomplished from existing court facility light sources. If no technically suitable lighting exists in the facility, modifications and additions may be made in light sources existing in the facility, provided such modifications and additions are unobtrusive, located in places designated in advance of any proceeding by the judge and without public expense.

Audio Pickup: Audio pickup for all purposes shall be accomplished from existing audio systems present in the court facility or from a television camera's built-in microphone. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the judge.

Technical Difficulties: Court proceedings shall not be interrupted or delayed because of technical or equipment problems. If any problem occurs, that piece of equipment shall be turned off while the proceeding is in session. No attempt shall be made to correct the technical or equipment problem until the proceeding is in recess or has concluded.

7.08 Location of Equipment and Conduct of Media Personnel

Location of Equipment and Personnel: The judge shall designate the location in the courtroom for media equipment and operators to permit reasonable coverage without disruption of proceedings.

Alterations: No permanent installation shall be made nor shall any court facility be altered, unless approved in advance by the judge. Expenses for alterations shall be borne by the media.

Movement During Proceedings: During proceedings, operating personnel shall not move about nor make any adjustment or change of any equipment which disrupts or distracts from the proceeding. Media broadcast, photography or audio equipment shall not be placed in or removed from the court facility except prior to commencement or after adjournment of proceedings each day, or during a recess in the proceeding.

Conduct of Media Personnel: Media personnel assigned to cover a judicial proceeding shall attire and deport themselves in such a way that will not distract from the proceeding.

7.09 Impermissible Use of Media Material: None of the film, videotape, still photographs, or audio recordings of proceedings under this rule shall be admissible as evidence in the proceeding out of which it arose, any proceedings subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

7.10 Ceremonial Proceedings: This rule shall not limit media coverage of investiture, ceremonial, or non-judicial proceedings conducted in court facilities under such terms and conditions as may be established by prior consent of the judge.

7.11 Compliance: Media personnel who fail to comply with this rule shall be subject to an appropriate sanction as determined by the circuit court judge.

RULES APPLICABLE TO CIRCUIT CIVIL CASES ONLY

RULE 8. TIME STANDARDS FOR DISPOSITION OF CASES

8.01 Time Standards: All civil cases should be set and concluded as expeditiously as possible.

8.02 Dismissal of Cases: To expedite cases, the court may take reasonable measures, including dismissal or entering scheduling orders, to enforce the time standard set forth above.

8.03 Docket calls or Status conferences: The court may hold docket calls or status conferences to ascertain the status of cases and set deadlines for their disposition. Attorneys are responsible for obtaining the dates of regularly scheduled docket calls from the Judge's secretary.

RULE 9. FORMS OF PLEADINGS

All pleadings shall contain a caption and designation as provided by Rule 10.01 Tenn. R. Civ P. In addition, all complaints, petitions and motions shall, in the designation thereof, contain a short statement of the relief sought or the nature of the matter contained therein. The clerk should refuse to accept a pleading not so styled unless an uncorrectable injustice would result from him or her doing so.

All pleadings addressed to the court shall be in the following form, to wit; In the Circuit Court of Tennessee for the Twenty-Eighth Judicial District at (Brownsville, Alamo, Humboldt, Trenton)

All pleadings shall conform to the requirements of Rules 7, 8, 9, 10 and 11, Tenn. R. Civ. P. Any pleading not conforming may, upon motion of an attorney, or by the court on its own motion, be stricken from the docket. **Pleadings are required to be on letter size paper. (8 1/2 by 11)** Until further notice, however, the clerk shall not refuse a pleading because of the size of the paper.

The clerk shall note the filing of all pleadings and documents as required by Rule 5.06 Tenn. R.Civ. P.

All pleadings and documents bearing the name of a legal firm shall also be signed individually by the member of the firm to whom the case is assigned and shall contain the address, phone number and Supreme Court Disciplinary Number of the attorney filing it.

RULE 10. THIRTY (30) DAY EXTENSION TO PLEAD

Any party may, by written stipulation signed by all opposing counsel, extend the time for pleading not to exceed thirty (30) days in addition to the period provided by the Tennessee Rules of Civil Procedure. Only one (1) such extension shall be granted without prior approval of the judge. Any extension not agreed to by stipulation, as set out above, or any additional extension, must be granted by the judge.

RULE 11. DEFAULT JUDGMENT/APPLICATION FOR

When a party against whom a judgment or affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, judgment by default may be entered as follows:

The party entitled to a judgment by default shall apply to the court. All parties against whom a judgment is sought shall be served with a written notice of the application for judgment at least thirty (30) days before the hearing on the application, regardless of whether the party has made an appearance in the action as provided for in Rule 55.01 Tenn. R. Civ. P.

If Rule 55 of the Tenn. R. Civ. P. is amended to require a different notice period, Counsel should comply with the Tenn. R. Civ. P.

RULE 12. GENERAL SESSIONS COURT APPEALS IN CIRCUIT COURT

Upon perfecting an appeal from a civil judgment in the various general sessions courts appellants shall have until the next session of the grand jury or the next motion day in that particular county, whichever comes first, within which to request a trial date setting such appeal for hearing in the circuit court unless, however, said grand jury or motion date shall fall within ten days of said appeal being filed. In such a case, appellants shall have until the following grand jury or motion date to make such request.

If the appellant fails to request a trial date within this period, an order may be entered making the judgment of the General Sessions Court that of the Circuit Court, with costs taxed against the appellant. This time limitation may be extended only for good cause and in the discretion of the Circuit Judge.

At the time the appeal is perfected, the Clerk shall give the appellant or appellant's attorney written notice of this Rule and shall advise same of the deadline for requesting a trial date.

RULE 13. DISCOVERY IN CIVIL CASES

The following rules shall govern requests for discovery in civil cases:

- A. Answers and other responses or objections to interrogatories, requests for production of documents and requests for admissions shall be numbered sequentially and shall set forth, immediately preceding the answer, the question asked in the same numerical sequence.
- B. No party shall serve on any other party more than thirty (30) interrogatories or requests for admission without leave of court. For purposes of this Rule a sub-part of an interrogatory shall count as an additional interrogatory. Any motion seeking permission to serve more than thirty (30) interrogatories shall set out the additional interrogatories the party wishes to serve, together with the reasons establishing good cause for the service of additional interrogatories.
- C. If a party is served with more than thirty (30) interrogatories, without leave of court, he or she shall respond only to the first thirty (30). This same Rule shall apply to requests for admission.
- D. Interrogatories under Rule 33 Tenn. R. Civ. P., Requests for Production under rule 34 Tenn. R. civ. P., Requests for Admission under Tenn. R. Civ. P. 36, and the responses to these discovery requests shall be served upon other counsel or parties but shall not be filed with the Clerk except as provided in the following subsections.
- E. If relief is sought under Tenn. R. Civ. P. 26.03 or Tenn. R. civ. P. 37 concerning any interrogatories, request for production or requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Clerk contemporaneously with any motion filed under Tenn. R. Civ. P. 26.03 or 37.
- F. Any previously unfiled interrogatory, request, answer or response that the Judge considers helpful in resolving a discovery dispute may be ordered to be filed with the clerk.
- G. To the extent their use can be reasonably anticipated, interrogatories, requests, answers or responses to be used as evidence upon the hearing of any motion or at trial, shall be filed with clerk prior to the hearing of the motion or trial.
- H. Notice of such filing shall be served on all counsel or parties before or at the time of the filing thereof. The timing and manner of service (mail or delivery) shall be calculated to provide reasonable notice thereof to all interested parties.
- I. Depositions under Tenn. R. Civ. P. 30 and 31 shall not be filed with the Clerk except as provided by this Rule. The party taking the deposition shall maintain custody of the original deposition during the pendency of the litigation or until the deposition is filed with the Clerk, unless the court otherwise directs. Depositions shall be filed only as follows:

1. When a deposition provides factual support for a motion or a response to a motion, the deposition shall be filed with the clerk with the motion or response that it supports is filed.
 2. When a deposition is to be read or otherwise used at trial or other proceeding it may be filed any time after its taking, but it shall be filed prior to the conclusion of the trial or other proceeding.
 3. When justice so requires, the court may order the filing of a deposition with the clerk.
- J. Notice of such filing shall be served on all counsel or parties before or at the time of the filing thereof. The timing and manner of service (mail or delivery) shall be calculated to provide reasonable notice thereof to all interested parties.
- K. The provisions of Tenn. R. Civ. P. 11 shall apply to all motions and responses concerning discovery pursuant to Tenn. R. Civ. P. 26 through 37.
- L. To curtail undue delay, the court will refuse to rule on any motion to compel, motion for protective order, or motion to quash unless moving counsel shall first file with the court at the time of filing of the motion a statement certifying that he or she has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised and that counsel have not been able to do so. If counsel for any party advises the court in writing that an opposing counsel has refused or delayed a discussion of the problems covered in this subsection, the court may take such action as appropriate to avoid delay, including the granting or denial of the discovery request.
- M. Motions to compel discovery shall either (a) quote verbatim the interrogatory, request, or question and any objection or response thereto, or (b) be accompanied by a copy of the interrogatory, request, or excerpts of a deposition which shows the question and objection or response; state the reason supporting the motion; and be accompanied by a discovery effort certification.
- N. Motions for protective orders which are filed pursuant to Tenn. R. Civ. P. 26.03, motions to quash subpoenas for discovery which are filed pursuant to Tenn. R. Civ. P. 45.02, or any motion asking that discovery be postponed or restricted shall: either (a) quote verbatim the interrogatory, request, question, or subpoena, or (b) be accompanied by a copy of the interrogatory, request, subpoena excerpt of a deposition which shows the question, state with particularity the grounds for the motion; be accompanied by an affidavit or other evidence showing the need for the order.
- O. If there is no written request or question pending, counsel shall set forth the anticipated question or area of inquiry and otherwise fully comply with this Rule.

P. Agreements to furnish exhibits made during the taking of depositions may be enforced by motion made pursuant to Tenn. R. Civ. P. 37 and/or these rules.

RULE 14. PROCESS/NOTICE TO OPPOSING COUNSEL AND ISSUANCE OF SUBPOENAS

With the exception of subpoenas for trial, any attorney who issues, or causes to issue any subpoena, shall give notice thereof on or before the date of issuance to all counsel of record or parties. The Clerk shall keep a copy in the Clerk's file of all subpoenas issued for service by the Sheriff or by any other persons, including attorneys, private process servers, and any person authorized by law to effect service.

RULE 15. APPOINTMENT OF GUARDIAN AD LITEM AND ATTORNEY AD LITEM

Whenever it is made known to the Court, by pleading or motion, that justice requires the representation by a guardian ad litem of a party, or an attorney ad litem, the attorney shall submit an order of appointment leaving blank the name of the person or persons to be appointed.

RULE 16. TEMPORARY INJUNCTION/HEARINGS AND MOTIONS TO MODIFY OR DISSOLVE INJUNCTIONS

Hearings for temporary injunctions shall be on sworn pleadings, affidavits, counter-affidavits, depositions and/or testimony, which shall be limited to the sole question of whether or not the temporary injunction is justified. Motions to modify or dissolve injunctions may be heard upon one (1) days' notice, or less, if ordered by the judge.

RULE 17. PRE-TRIAL PROCEDURE IN CIVIL CASES

17.01 Required Exchange of Witnesses and Documents: At least ten days before the trial of a civil case, opposing counsel shall either meet fact-to-face or shall hold a telephone conference for the purpose of making available for viewing and to discuss proposed exhibits and exchange a list of witnesses and exhibits. In the event that the parties hold a telephone conference rather than a face-to-face meeting, the exhibits shall be made available for viewing before the conference.

Failure to comply or attempt to comply with this requirement shall be construed as a waiver of objection to said exhibits.

17.02 Notice of Intent to Use audio/Visual Recording Required: When a party intends to offer an audio and/or visual recording as evidence in a jury trial, counsel must provide written notice to all adverse counsel at least ten (10) calendar days before a trial. Adverse counsel shall be permitted to review the recording in the days before a trial. Adverse counsel shall be permitted to review the recording in the form to be offered at trial and shall be allowed to copy the recording at his or her own expense. Adverse counsel shall promptly advise the other attorney of each objection to the recording. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion in limine shall be

filed and set sufficiently before trial so that the objections may be ruled on in time to allow any necessary editing.

17.03 Briefs in Civil Jury Cases: In all civil jury cases, unless otherwise allowed by the Court, trial briefs shall be submitted to the Court no fewer than five (5) calendar days before the trial of a case, and also furnished to opposing counsel. The trial brief format for jury trials is listed below. If an issue to be litigated at trial has been briefed in pre-trial motions however and counsel believes his or her motion brief adequately covers all issues, counsel may refer the court to the motion brief in lieu of briefing such issues for trial. The court may impose sanctions against attorneys who fail to provide such trial briefs in a timely manner.

TRIAL BRIEF FORMAT FOR A JURY TRIAL

1. A concise statement of the facts
2. The factual issues to be decided
3. Points of Law C (Address all areas felt appropriate, including those of an evidentiary nature, if felt controversial.)
4. A written argument is neither required nor desired, but may be included, if felt necessary by counsel.
5. Complete list of proposed jury instructions C (Mere T.P.I. citations as to pattern instructions will suffice; however, complete instructions are preferred.)

Trial briefs should not be filed with the Clerk, but should be sent directly to the trial Judge at his or her address, which is, until further notice:

Haywood County Justice Complex
100 South Depree Avenue
Brownsville, Tennessee 38012

Include photostatic copies of any out-of-state or unreported cases cited and all statutes relied upon.

Counsel will attach copies of their respective pleadings leading to a joining of issue, i.e. complaint and answer-amended, supplemental etc.

Counsel shall be responsible for using whatever means of delivery as will get trial briefs to the office of the circuit judge a full five calendar before trial.

17.04 Briefs in Civil Non-Jury Cases: In all civil non-jury cases, except uncontested divorces, trial briefs are required. Unless otherwise allowed by the Court, trial briefs shall be submitted to the court five (5) calendar days before the trial of a case and also furnished to opposing counsel. The trial brief format follows. If an issue to be litigated at trial has been briefed in pre-trial motions, however, and counsel believes that the motion brief adequately covered the issue, counsel may refer the court to the motion brief in lieu of briefing the issue for trial.

TRIAL BRIEF FORMAT NON-JURY

1. A concise statement of the facts
2. The factual issues to be decided
3. Points of Law C (Address all areas felt appropriate including those of an evidentiary nature, if felt controversial.)

A written argument is neither required nor desired, but may be included, if felt necessary by counsel.

Briefs should not be filed with the clerk, but sent directly to the trial judge at his address, which is, until further notice,

Haywood County Justice Complex
100 South Depree Avenue
Brownsville, Tennessee 38012

Include photostatic copies of any out-of-state or unreported cases cited and all statutes relied upon.

Counsel will attach copies of their respective pleadings leading to a joining of issue, i.e. complaint and answer B amended, supplemental, etc.

Counsel shall be responsible for using whatever means of delivery as will get trial briefs to the office of the circuit judge a full five calendar days before trial.

RULE 18. MOTIONS IN CIVIL CASES

18.01 Hearings: All motions shall be in writing and shall state with particularity the grounds for the motion and the relief sought. Opposing counsel will then have fifteen (15) days to file a response to said motion unless otherwise set forth in the Tennessee Rules of Civil Procedure. The attorney who files a motion has the burden to make application for a hearing at the next available motion day or as soon thereafter as practicable. **Failure to comply with this Rule shall be construed by the court as abandonment of the motion.**

When a motion is set for a hearing, the judge shall be provided by the attorney who filed the motion with a courtesy copy of the motion and all supporting materials before the date of the hearing. The judge shall in like manner be provided by the attorney responding to the motion with a copy of the response along with all supporting materials.

Copies of pertinent portions of any cases relied upon in oral argument during motion hearings must have been provided to both opposing counsel and the judge at least five days prior to the hearing unless exigent circumstances and the interests of justice dictate otherwise.

18.01 (a) Dispositive Motions: All Motions potentially dispositive of any issue in a case shall be scheduled for hearing by the attorney filing the motion at the next available motion

day after the filing or as soon thereafter as is practicable. Failure to obtain a hearing in a timely manner may be construed by the Court as an abandonment of the motion and the Court may refuse to consider the motion. A list of motion dates may be obtained from the Judge's office.

18.01(b) Summary Judgment: Motions for summary Judgment shall be filed and served at least sixty (60) days before the scheduled trial date. Any Motion for Summary Judgment filed within sixty (60) days of the scheduled trial date will not be heard and the matter will proceed to trial.

All motions for summary judgment and to dismiss supported by evidentiary matters shall be filed at least thirty (30) days before hearing of same as required by Rule 56.04 of the Tenn. R. Civ. P. Attorneys for the proponent of the motion shall deliver memorandum briefs to the court (with a copy of affidavits and supporting documents), and shall file with the Clerk all original affidavits and supporting documents at least thirty (30) days prior to the hearing of the motion.

Attorneys for the respondent shall deliver memorandum briefs to the Court, (with a copy of affidavits and supporting documents), and shall file with the clerk all original affidavits and supporting documents not later than five (5) days before the hearing as required by Rule 56.04 of the Tenn. R. Civ. P. No motions shall be heard unless the parties comply with this rule.

18.01(c) Motions in Limine. Motions in limine shall be filed no less than seven (7) calendar days before trial and set for hearing before the trial. The Court shall also be notified by that date of any objections in medical depositions to be read or shown to the jury and the objections shall be heard before the trial. Failure to timely file such motions will result in their not being heard unless the judge determines that refusing to do so would result in an injustice to one party or another. The intent of this Rule is to allow counsel adequate time to respond to a motion in limine but counsel are encouraged to respond to a motion in limine and schedule a hearing as soon as practicable.

18.02 Opposition to Motions: If a motion is opposed, a response to the motion must be filed. The response shall be in writing and shall state with particularity the grounds for the opposition. If no opposition to the motion is filed, the motion will be considered unopposed. Responses to motions, including any opposing affidavits, depositions or briefs or any other matter being presented in opposition to the motion must be filed and furnished to opposing counsel at least five (5) days in advance of any scheduled hearing.

In the court's discretion, the part of this Rule requiring a response five (5) days in advance of the hearing (trial) may be modified with respect to a motion in limine that is filed on or near seven (7) calendar days before trial.

18.03 Recusal of Judge: Motions for recusal of the judge should be made so as to not delay a trial and within 14 calendar days of learning of grounds for said motions.

18.04 Failure to Appear at a Motion Hearing: If counsel for either party does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike, deny, or otherwise dispose of that motion in the party's absence.

18.05 Orders From Motion Hearings: The prevailing party or designated attorney shall prepare and submit an order reflecting the decision in every motion hearing.

RULE 19. SPECIAL SETTINGS FOR MOTIONS

Special settings for motions that cannot be heard on a regularly scheduled motion day may be arranged with the judge and are encouraged, as is the hearing of motions by telephone conference when all parties agree thereto.

RULE 20. TRIAL DATES IN CIVIL CASES C SETTING

20.01 Method of Setting: When a case is ready for trial the attorney for either party may obtain a trial date in one of the following ways:

- A. by agreement of counsel after consultation with the judge in person or by telephone conference;
- B. by motion conforming to Tenn. R. Civ. P. 6.04, 6.05 and 7.02;
- C. by the court with notice to counsel; or
- D. by the court during a civil docket call.

Attorneys are responsible for obtaining the dates of the docket calls from the judge's secretary.

When a case is set by agreement, at docket call or otherwise, or when a case is set by motion without objection, all counsel are certifying that they are available for trial and that the case will be ready for trial on the trial date. Counsel shall not apply for or obtain any trial setting from the court without prior notice to all counsel or parties of the time and place of application.

Deadline for Trial Preparation: The court may issue a scheduling order which will establish deadlines for completing trial preparation and set a trial date.

RULE 21. DISMISSAL FOR LACK OF PROSECUTION

Whenever a cause has remained on the docket for twelve (12) months or more without steps being taken by the plaintiff to dispose of the cause, the opposing parties shall be entitled, upon motion with service to all parties, to request the court for a dismissal of the cause with prejudice at plaintiff's costs.

The judge may also, after giving adequate notice to all parties, dismiss such causes on his or her own motion.

RULE 22. MEDIATION

At the hearing of a cause, or upon motion, a matter may be referred to a mediator in accordance with the provisions of rule 53 Tenn. R. Civ. P., or to a mediator in accordance with Rule 31 of the Supreme Court Rules.

Upon agreement of the parties or upon order of the court any matter may be referred to a mediator for a potential resolution of the issues in that cause. The costs of any alternative dispute resolution proceeding, including the costs of the services of the Rule 31 dispute resolution mediator, at the mediator's request, may be charged as court costs. The court may, in its discretion, waive or reduce costs of an alternative dispute proceeding.

RULE 23. DIVORCE ACTIONS, SWORN STATEMENTS

In all contested divorce actions, both parties shall file a sworn statement of assets, liabilities and sources and amounts of income at least seven (7) days prior to the hearing of the action. A copy of the sworn settlement shall be served upon opposing counsel. Sworn financial statements shall include, but not be limited to the following:

1. A statement of current earnings;
2. A list of specific present assets accumulated during the marriage;
3. Assets owned by each spouse but not accumulated during the marriage; and
4. A list of present liabilities accumulated during the marriage.

Complaints which include requests for pendente lite which are set for hearing by order to show cause, order setting hearing, or fiat, shall include a statement of facts justifying the relief sought and, prior to the hearing, all parties will submit affidavits in support or opposition to the relief sought.

RULE 24. ORDERS AND JUDGMENTS

Orders and judgments shall be headed by a title indicating the nature thereof. Unless otherwise permitted by the court, orders shall be presented to the court within fourteen (14) calendar days after a decision is rendered.

It shall be the duty of attorneys for successful parties, unless the court directs otherwise, to prepare orders for entry by the court, the same to be submitted to opposing counsel. When opposing counsel receives a copy of an order by mail, he or she shall approve the order immediately if he or she has no objection to the form or substance of the order and forward same to the court.

If opposing counsel refuses or declines to approve any order and an agreed order cannot be obtained, either party may submit an order to the court after service of a copy of the proposed order upon the opposing party.

Orders mailed to counsel and presented to the court and containing only the signature of the attorney preparing the order will not be entered immediately, but will be held by the judge for ten (10) days. If the court receives no objection within the ten (10) day period,

the order will be entered. When opposing counsel disagrees as to the terms of an order, a corresponding proposed order shall be prepared by counsel opposing the order. Counsel shall deliver the same to the judge before the expiration of the ten (10) day period. The time for these actions shall be computed under Tenn. R. Civ. P. 6.

RULE 25. JURY TRIALS C NOTICE OF DEMAND

Whenever a complaint or other pleading in which a jury is demanded is presented for filing, the attorney shall endorse on the face thereof the words, Jury Demanded. The words Jury Demanded- should be placed under the docket number. If a jury is thereafter demanded by any party in the action, the judge to whom the case is assigned shall be notified immediately by that party.

RULE 26. ARGUMENTS AND BRIEFS

The court may, in its discretion, limit or direct argument and, in non-jury cases, may choose not to hear closing argument.

Briefs of law may be prepared in advance of the hearing and the court encourages the submission of briefs of law in advance of the hearing of a case. In all matters or hearings of any type, if briefs are to be submitted, they should be delivered to the court not less than three (3) working days before the hearing. The court may call for additional briefs.

If counsel plans to rely upon statutory or case authority during argument notice of such authority shall be given to opposing counsel and to the judge at least three (3) working days before the hearing. Providing complete copies of such cases or statutes is not required but is encouraged.

RULE 27. MOTIONS FOR NEW TRIAL IN CIVIL CASES

Motions for new trial shall be filed and disposed of as provided by Rule 59 Tenn. R. Civ. P.

Motions for new trial shall be in writing and filed with the clerk within thirty (30) days after rendition of a jury verdict or the entry of any decree or judgment to which exception is taken. Such motions shall be presented to the court and disposed of within thirty (30) days of the date of filing. Additional time may be granted by order of the court.

All motions for new trial shall conform to the following requirement:

If a new trial is sought on the ground of error in the charge of the Court, the particular language of the charge of which the complaint is made shall be quoted. No general reference to the charge as erroneous as a whole shall be regarded as sufficient, but the particular part or parts of the charge complained of must be pointed out and quoted in the written motion for new trial, followed by a statement explaining why it is contended that same is erroneous.

It shall not be sufficient to state in general terms that the court erred in the rejection or

admission of evidence but the party seeking a new trial shall, in the motion for new trial, point out the testimony which it is contended was erroneously admitted or excluded, either quoting same literally, giving the substance of it, or otherwise referring to it in such a manner that the exact part of the evidence so admitted or excluded can be identified specifically at the hearing of the motion for new trial.

RULE 28. INVESTMENT OF FUNDS PER COURT ORDER

The clerk shall invest litigant's funds paid into court only if there is a court order directing her or him to do so. The order should state the name of the financial institution in which the funds are to be invested and the specific type of account to be utilized. At the time of payment, or when the order is entered, if later, it shall be the duty of the attorney seeking investment of funds to specifically notify the clerk receiving payment that the funds are to be invested and to provide an IRS form W-9 to the clerk's bookkeeping department for the party responsible for tax liability. Funds shall not be withdrawn without an order of the court.

RULE 29. CONTINUANCES IN CIVIL CASES

Cases may be continued by agreement only on approval of the court. Application for a continuance of any case set for trial must be made five (5) calendar days in advance of the day the case is set for trial and must be supported by an affidavit filed with the clerk of the court giving grounds for seeking a continuance. **Unless required by exigent circumstances, counsel shall not apply for a continuance except upon motion.** Notice to all counsel and any pro se litigants shall be given as required by Tenn. R. Civ. P. 6.04, 6.05, or in such manner as to provide reasonable notice and an opportunity to be heard to all parties.

Normally, the absence of a witness will be grounds for a continuance where the subpoena for a local witness was issued ten (10) days or more before the date of trial, or fifteen (15) days or more before the date of trial where the witness is out of the county, however, each application for a continuance is subject to the discretion of the court.

When an application for a continuance is based upon the illness of a party or a material witness, said application must be accompanied by a written statement of a physician specifying the type of illness, whether or not the illness is of a temporary or permanent nature, and whether or not such person is physically able to appear in court without endangering his or her health.

When application for a continuance is based upon the fact that a material witness cannot be found, an affidavit must be filed giving the name of said witness or witnesses, what evidence is expected to be proved by said witness or witnesses, and what effort has been made to locate said witness or witnesses.

If a case is continued or settled, each attorney who has had subpoenas issued for witnesses is responsible for notifying said witnesses not to appear and is ordered by the court to do so. Failure to comply could result in costs being assessed against the party failing to do so.

If a case is continued, a new trial date will be ordered by the court for a date certain. Such resetting shall normally be made at the time the motion for continuance is granted.

RULE 30. SUBPOENAS IN CIVIL CASES

30.01 Subpoenas Issued By Clerk: In civil actions, subpoenas shall be issued and signed by the clerk in triplicate. The attorneys shall prepare and submit an original and two copies of each subpoena for issuance by the clerk.

1.02 Time for issuing Subpoenas: Subpoenas for a local witness must be issued and dated by the clerk no later than ten (10) days before the date of trial unless prior approval has been granted by the judge for an extension. If the witness is to be served out of the county, the subpoena must be issued by the clerk no later than fifteen (15) days before the date on which the case is set for trial and promptly mailed or otherwise transmitted to the out of the county sheriff or other authorized person to effect service of the subpoena.

The foregoing notwithstanding, the clerk shall not refuse to issue a subpoena even if requested after the dates set forth above. Attorneys shall obtain blank subpoenas for a specific case only and shall use or return them no later than five days before the trial date. An attorney who causes a subpoena to be served shall return the served original no less than five (5) days before trial.

30.03 Address of Witness: Counsel of record shall be responsible for providing street addresses and phone numbers, if known, on the requested subpoena(s). It is not the duty of the clerk or his or her deputies to look these numbers and addresses up, and counsel are discouraged from doing so.

30.04 Prison Inmates: The attendance of prison inmates who are witnesses or parties in civil cases remains governed by T.C.A. 41-21-304.

RULE 31. SETTLEMENT OF CIVIL CASES C NOTIFICATION OF JUDGE, CALLING OFF JURY

Attorneys in civil cases should notify the circuit judge immediately if a settlement is reached prior to the date of a jury trial or if a jury is not needed for any reason. If a jury is called in, and a case is not tried to a jury on that date, the court may assess the cost of the jury to the parties.

RULE 32. ALTERNATIVE DISPUTE RESOLUTION

Upon agreement of the parties, or upon order of the court, any matter may be referred to a mediator for a potential resolution of the issues in that cause.
(Rules pertaining specifically to criminal cases continue on the following pages.)

RULES APPLICABLE TO CRIMINAL CASES

RULE 33. EXTRAORDINARY INTERLOCUTORY RELIEF IN CRIMINAL CASES

All special requests for extraordinary interlocutory relief in unindicted and unassigned cases, including but not limited to the amount of a defendant's bail, shall be presented to the circuit court judge. This rule applies to all three (3) counties in the Twenty-Eighth Judicial District. Any such requests should be presented to other judges if, and only if, the situation is an emergency *and* the circuit judge is unavailable.

RULE 34. DISCOVERY IN CRIMINAL CASES

All requirements of the Tennessee Rules of Criminal Procedure regarding discovery shall be complied with in a timely fashion. When a party intends to offer discoverable evidence in a jury trial and the law requires its disclosure to adverse counsel, adverse counsel shall be permitted to review the evidence in the form to be offered a trial and shall be allowed to copy and or record or otherwise reproduce it at his or her expense. Adverse counsel shall promptly advise the other attorney of each objection to said evidence. The lawyers shall then attempt in good faith to resolve objections. If no resolution is reached, a motion shall be filed and set sufficiently before trial so that the objections may be ruled on in time to allow compliance with the court's ruling and whatever strategy review is necessary.

RULE 35. SUBPOENAS IN CRIMINAL CASES

35.01 Subpoenas Issued by Clerk: In criminal cases the issuance of subpoenas for witnesses shall comply with each individual circuit court clerk's policies.

35.02 Time for Issuing subpoenas: Subpoenas for local witnesses must be issued and dated by the clerk no later than seven (7) calendar days before the date of trial unless prior approval has been granted by the judge for an extension. If the witness is to be served out of the county, the subpoena must be issued by the clerk no later than fourteen (14) calendar days before the date on which the case is set for trial and promptly mailed or otherwise transmitted to the out of the county sheriff or other authorized person to effect service of the subpoena.

The foregoing notwithstanding, the Clerk shall not refuse to issue a subpoena even if requested after the dates set forth above.

35.03 Blank subpoenas: Attorneys shall obtain A blank subpoenas for a specific case only and shall use or return them no later than five days before the trial date. Such subpoenas shall be issued in accordance with the clerk's office policy regarding same.

35.03 Address of Witness: Counsel of record shall be responsible for providing street addresses and phone numbers, if known, on requested subpoena(s). Do not ask the clerk's office for assistance in locating addresses or phone numbers. It is not part of their duties to provide such information.

35.04 Prison Inmates: The following rules apply to obtaining the appearance of prison

inmates in court:

- A. When the prison inmate is a *defendant* in a criminal case, the district attorney general's office shall prepare a proposed transport order and submit it to the court at least seven (7) calendar days prior to the court date.
- B. Counsel needing prison inmates as *witnesses* in a criminal case shall submit a proposed transport order at least seven (7) calendar days prior to the trial or hearing date. Defense counsel in criminal cases shall make every effort to insure that prison inmates are not needlessly brought to court for a scheduled settlement docket unless the case is for actual settlement and/or there is other just cause.

Deadlines on transport orders may be waived by the court for just cause if it is practicable for the sheriff's department to transport the inmate on short notice.

35.05 Notice of Additional Witnesses: Required notice of additional witnesses shall be filed as far in advance of trial as is reasonably practicable, allowing sufficient time for opposing counsel to make whatever case preparation necessary. Failure to adhere to the spirit of this rule may result in the witness not being allowed to testify. Notice given less than seven (7) calendar days prior to trial shall be presumed, absent compelling circumstances, to be unreasonable.

RULE 36. MOTIONS IN CRIMINAL CASES

36.01 Time for Filing Pre-Trial Motions: All pre-trial motions shall be made pursuant to Tenn. R. Crim. P. as well as the pre-trial scheduling order, if one has been entered.

36.02 Failure to Appear at a Motion Hearing: If counsel for a defendant or the State does not appear at a scheduled hearing on a motion or any other matter scheduled to be heard on the motion docket, the court may strike, deny, or otherwise dispose of that motion in the movant's absence.

1.03 Motions in Limine: Motions in limine seeking to resolve a trial evidentiary matter shall be set at the discretion of the court.

Counsel are encouraged to raise appropriate evidentiary objections by written motion at least ten (10) days before trial.

RULE 37. FILING AND SETTING OF MOTIONS

Pre-trial motions should be filed no less than ten (10) days before trial setting, and they will, if practical, be set on motion days designated by the Court, and may be scheduled by attorneys on such motion dates on seven (7) calendar days written notice to the judge's secretary and the opposing party, or may be set by agreement with the court. If necessary, and in the interests of justice, the court may allow the opposing party a reasonable continuance for good cause shown. Motions filed less than ten days before trial will not be heard unless the judge determines that the interests of justice in the individual instance override the calendar needs of the court.

RULE 38. DIVERSION AND POST-PLEA EXPUNGEMENT REQUESTS

All requests for pre-trial diversion must be made within twenty (20) calendar days of arraignment or within ten (10) days of an attorney's accepting employment or appointment, whichever is later. Failure of counsel to comply with this rule may result in the denial of pre-trial diversion. **A pending diversion request not filed in accordance with this rule shall not be considered appropriate grounds for a continuance.**

The attorney requesting pre-trial diversion shall request an order for an investigation and preparation of a report by the appropriate probation authorities. The district attorney general shall arrange for said report and also shall request a TBI eligibility check for the defendant, and shall provide same to defense counsel along with whatever pre-trial diversion application is required by the district attorney's office. The investigation order and the order for a pretrial investigation shall provide that the defense attorney shall be provided copies of said reports and results contemporaneously with the district attorney general's office.

After counsel for defendant has received both the pre-trial investigation report and the TBI approval form, counsel for defendant shall then have up to fifteen (15) days to respond by submitting to the district attorney an Attorney's Certificate form, a copy of which is attached to these rules at appendix A, and the completed diversion application form.

The parties may agree to a longer response time, not to exceed thirty (30) days, if such extension will not delay a scheduled trial from being tried on its scheduled date. If the form is timely submitted and no additional time requested, then the matter will be deemed ripe for decision. The district attorney general will then have fifteen (15) days in order to respond. If the district attorney general shall not respond within fifteen days, it will be presumed that he or she agrees that pre-trial diversion is appropriate and that the judge may grant such relief on its own motion if the interests of justice so require.

The court will not accept any settlement based on pre-trial diversion, judicial diversion or any settlement involving post-plea expungement of any sort until TBI approval has been obtained.

The deadlines set out in this section may be waived or modified upon motion of either party, but only upon good cause shown.

RULE 39. TRIAL SETTINGS AND CONTINUANCES IN CRIMINAL CASES

39.01 Method of Setting: Cases will normally be set for trial by the court at the time of arraignment. When the caseload requires that multiple cases be set on the same date preference will first be given to cases in which defendants are incarcerated. Otherwise, and as a general rule, the oldest case will be tried first, however, all cases set for a given date must be ready for trial on that date in the event the anticipated case cannot be presented. In cases where this procedure would work an unreasonable hardship on victims or witnesses necessary adjustments will be made by the judge.

39.02 Continuances: Cases may not be continued by agreement and may be continued only by leave of court. When a case has been set for trial it will not be continued except for good cause, which shall be brought to the attention of the court as early as practicable before the date of the trial.

Absence of a witness will not be a ground for continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and Rule 17, Tenn. R. Crim. P.

If a case is continued, a new trial date will be assigned at the time of the continuance. *It shall be the responsibility of the party issuing a subpoena for a witness to notify that witness of any continuance in sufficient time to avoid the witness's making an unnecessary trip to court.*

39.03 Jailed defendants: In cases wherein the defendant is incarcerated, cannot make bond, and demands a speedy trial, said case shall be placed upon the trial docket by the judge at the earliest available date.

RULE 40. CLOTHES FOR INCARCERATED DEFENDANTS

Counsel for jailed defendants should make a diligent effort to have clothes provided to his or her client no later than 7:00 a.m. on the day of trial. The purpose of this rule is to avoid a delay on the day of trial while street clothes are obtained for an incarcerated defendant.

RULE 41. WAIVER OF ARRAIGNMENT

Waiver of arraignment is permitted, but said waiver must be in writing, and signed by the defendant. Waivers shall be filed **prior to the opening** of court on arraignment day, with service at the time of filing to the office of the district attorney and the judge presiding over arraignment. Counsel of record must appear at said arraignment pursuant to Tenn. R. Crim. P. Rule 43 (c) (4) unless otherwise granted prior permission to be absent by the judge.

RULE 42. SETTING CRIMINAL CASES C NOTIFICATION OF VICTIMS

42.01 Case Settings: Cases will normally be set for trial the term following arraignment. A calendar will be published by the court to reflect the settings. When Court schedules are full, as they usually will be, priority will be given to those defendants who are incarcerated. Because of perennial and significant overcrowding of the criminal docket, and in the interests of the efficient administration of justice for all parties concerned, plea deadlines will be established for all cases. If cases are settled, the pleas will normally be taken on trial dates, but may, for the sake of convenience and to conserve judicial system resources, be taken at other times. A settlement deadline shall be set in each case at the time the trial date is established.

42.02 Notice to Victims: In recognition of T.C.A. § 40-38-101, in cases involving plea agreements pursuant to Tenn. R. Crim. P. 11, the judge will refuse to accept the plea unless the prosecuting attorney states on the record that he or she has, before the plea, communicated with the victim regarding the plea or made a good faith effort to

communicate with the victim. This rule shall apply to pleas in cases where the defendant is indicted for the following offenses:

- A. murder or the attempt, facilitation or solicitation to commit murder; voluntary manslaughter, reckless homicide, criminally negligent homicide or the attempt, facilitation or solicitation to commit these crimes;
- B. vehicular homicide;
- C. aggravated assault;
- D. aggravated kidnaping, kidnaping or the attempt, facilitation or solicitation to commit these crimes;
- E. all felonies described as sexual offenses under T.C.A. '39-13-501, et seq., or the attempt, facilitation or solicitation to commit these crimes;
- F. aggravated arson and arson or the attempt, facilitation or solicitation to commit these crimes;
- G. robbery, aggravated robbery and theft of property from the person;
- H. especially aggravated burglary or aggravated burglary or the attempt, facilitation or solicitation to commit these crimes;
- I. all felonies described as Offenses Against the Family under T.C.A. ' 39-15-101, et seq., or the attempt, facilitation or solicitation to commit these crimes;
- J. vandalism;
- K. stalking; and all other crimes involving individual victims.

In cases that have been worked by a specific law enforcement worker, that worker shall also be notified prior to the plea agreement being offered to the court.

RULE 43. APPOINTMENT OF ATTORNEY FOR INDIGENT DEFENDANT

If the Court determines that a defendant is indigent, the Court will appoint an attorney to represent that defendant at arraignment or as soon thereafter as possible. Partially indigent defendants shall be required to compensate the State of Tennessee for the representation provided to the extent of their financial ability to do so.

RULE 44. BONDING COMPANIES AND SETTING OF BAIL

All matters involving the qualifications and operation of bond persons and bonding companies shall be addressed to the circuit judge of the court, who shall hear and dispose of such petitions and applications, as he or she shall determine. All applications for relief pursuant to T.C.A. ' 40-11-204 shall be in writing and filed with the clerk with a copy to the district attorney general. The court shall dispose of such applications in open court with both the bonding company and the State being given an opportunity to be heard.

Bail shall be set or modified by the circuit judge in appropriate cases. All requests for modification of bail shall be in writing and shall comply with appropriate Tennessee law.

RULE 45. TRIAL CALENDAR C MODIFYING

No one but the circuit judge may add or remove a case from the trial calendar or any other docket involving criminal cases.

RULE 46. PROCEDURE DURING TRIAL OF MULTIPLE DEFENDANTS

Where there is more than one defendant in a case being tried, defense counsel may agree on the order they shall follow. If counsel are unable to agree, the order in which the defendants are named in the indictment shall be followed. If each defendant is named by separate indictment, the order shall be followed chronologically. Such order shall be followed in the voir dire, pleas, cross-examination, testimony of defendants and arguments of counsel.

RULE 47. ORDERS IN CRIMINAL CASES

47.01 Preparation and Submission of Orders By Counsel: Prevailing counsel will prepare orders for entry by the court within fourteen (14) calendar days of issuance of said orders. The circuit judge may grant an extension of this time for good cause shown.

47.02 Disagreements Over Contents of Orders: When counsel disagree on contents of an order, this fact shall be communicated to the judge as soon as said disagreement becomes known. In that event, opposing counsel shall each proffer to the court and to opposing counsel a proposed order. If neither alternative is considered by the judge to be correct then in that event, a conference shall be scheduled at a time convenient to the parties and the judge.

RULE 48. PRE-SENTENCE REPORTS

In any case where preparation of a pre-sentence report is required, except requests for pre-trial diversion, the district attorney general shall notify the office responsible for preparing the report of said requirement within one week after conviction or entry of plea. In cases where pre-trial diversion is requested, it is the responsibility of the attorney requesting diversion to also request the diversion eligibility report. The court will instruct all parties of this rule where applicable.

RULE 49. SETTING ATTORNEY FEES

All forms to request compensation for representing indigent felony defendants must be completed by the attorney and presented to the judge who heard the case. If an attorney represents two or more defendants by appointment at arraignment, he or she can only claim that time once, and not claim the same time as to each defendant. In the event an attorney represents a defendant with multiple indictments on which the defendant is arraigned and tried on the same date, that attorney should complete only one compensation form showing the time spent on behalf of this defendant, and not separate forms for each case. Failure to follow this rule may result in compensation forms being disallowed by the court.

RULE 50. SEQUESTERED JURY

If either party requests a sequestered jury pursuant to T.C.A. § 40-18-116, a Notice of Requested Sequestration of Jurors shall be filed with the Clerk at least ten (10) calendar days prior to the date of trial. A copy of the notice shall be provided to the trial judge and the sheriff by the attorney filing the notice. Failure to make a timely request may result in

said request being denied without a hearing, however, the judge may waive the time limitation when the interests of justice demand doing so.

RULE 51. SENTENCING

The parties shall file written statements setting forth any enhancement or mitigating factors that the parties believe should be considered by the court at least five (5) calendar days prior to the date of any sentencing hearing (T.C.A. ' 40-35-202). The requirements of the law regarding sentencing hearings and considerations will be strictly adhered to. This rule may be modified in individual cases if the interests of justice so require.

RULE 52. JURY TRIALS PRE-TRIAL REQUIREMENTS

52.01 General Sessions Appeals: Whenever a general sessions appeal in which a jury is demanded is presented for filing, the attorney, or litigant, shall endorse on the face thereof the words, Jury Demanded, and such fact shall be called to the attention of the clerk when the case is set for trial.

Requests for Jury Trial: Any party may, upon motion and showing of a right to a jury trial, be granted the same.

52.02 Issues of Law and Disputed Facts, Notification of Such to Court: The court, in its discretion, may require the attorneys in jury cases to submit to the court issues of law and disputed issues of fact seven (7) days prior to the commencement of the trial. In addition, the court may, in its discretion, order the parties to a pre-trial settlement conference.

52.03 Pre-marking of Exhibits: The Court may require the attorneys to pre-mark exhibits at least seven (7) days before the trial begins. The attorneys shall have enough copies of documentary and photographic exhibits for the court, all opposing counsel and the jury.

52.04 Special instructions: If a party has special jury instructions which they wish the Court to consider, the jury instructions shall be submitted to the Court at least seven (7) days before the trial.

RULE 53. DISMISSAL FOR LACK OF PROSECUTION

Whenever a cause has remained on the docket for twelve (12) months or more without steps being taken by the appropriate authorities to dispose of the cause, or move it along, the court, on its own motion, may remove said case from the docket after giving notice to all parties.

RULE 54. CONTINUANCES

Cases may be continued only by approval of the court. In the absence of extraordinary circumstances, an application for a continuance of any case set for trial must be made at least five (5) full days in advance of the day the case is set for trial and must be supported by an affidavit filed with the clerk of the court giving grounds for seeking a continuance. If circumstances justifying a continuance should arise within five (5) days of trial, which

were not reasonably foreseeable to the parties or counsel, the court may entertain and grant a motion for continuance less than five (5) days before trial, upon notice to all parties and opportunity for a hearing.

The circuit judge shall be notified immediately should the need for any continuance arise.

Normally the absence of a witness will be considered grounds for a continuance only when the witness is material and where the subpoena for a local witness was issued seven (7) days or more before the date of trial, and fourteen (14) days where the witness is out of the county: however, each application for a continuance is subject to the discretion of the court.

When application for a continuance is based upon the illness of a party, or a material witness, said application should be accompanied by a written statement of a physician specifying the type of illness, whether or not the illness is of a temporary or permanent nature, and whether or not such person is able to appear in court.

When an application is based upon the fact that a material witness cannot be found, an affidavit must be filed giving the name of said witness or witnesses, what evidence is expected to be proved by said witness or witnesses, and what effort has been made to locate said witness or witnesses.

If a case is thus continued, a new trial date shall be ordered by the court for a date certain at the time the motion for continuance is granted.

RULE 55. MOTIONS FOR NEW TRIALS IN CRIMINAL CASES - NOTICE TO COURT REPORTER REQUIRED

When criminal cases are appealed it shall be the responsibility of the attorney filing said appeal to send to the court reporter responsible for preparing the court transcript the following items:

- A. a notice of said appeal prior to, or contemporaneously with, said filing, and
- B. a designation of transcript and copy of motion for new trial and order overruling same.

The clerk *shall not* accept said notice of appeal unless proof of these requirements having been met shall appear at the bottom of said motion in the form of a certificate of service to the court reporter attesting to the fact that this requirement has been complied with.

RULE 56. PLEAS OF GUILTY AND NEGOTIATED SETTLEMENTS IN CRIMINAL CASES

General rules: Negotiated settlements are encouraged, but must be arranged in such a manner that judicial system resources are fully utilized. The following rules shall apply to criminal case negotiations:

- A. The district attorney general's office is under no duty to negotiate cases. Nor is any defendant, nor is his or her attorney; however, any negotiations that are to be had must

be done in timely fashion.

- B. All negotiations, including details such as reporting dates and restitution amounts, must be resolved and concluded in an individual case by the plea deadline set for that case. *It shall be the responsibility of the district attorney general's office in negotiated cases to ascertain, prior to any settlement being approved by the court, the exact amount of any restitution required to be paid by the defendant and the means by which it shall be done.*
- C. The plea deadline in each case will be the Monday closest to fourteen (14) calendar days prior to the grand jury date for the term in which the case is set. In other words, the fact that a Monday holiday causes the grand jury to meet on a Tuesday will not make the plea deadline a Tuesday as well. Plea deadlines will always be on Mondays. The judge may, however, set additional or different plea deadlines, when appropriate, for individual cases.
- D. If a case is not tried on the scheduled trial date it will be reset immediately, if practical to do so. It will receive a new plea deadline only if, in the judge's opinion, it is in the interest of justice to set one. If a specific plea deadline is not announced at a resetting then the plea deadline, however, a new deadline will be set, it being fourteen (14) calendar days prior to the date of the grand jury meeting of the term in which the case is reset.
- E. The circuit court judge will be notified on or before the date of the plea deadline that a case is settled. Notification shall consist of notifying the judge, or his secretary, or leaving a message to that effect on the answering machine in the judge's office. The judge will then take the case off the trial docket and arrange a date, usually the trial date, for hearing the plea. If said notification is not made on or before the plea deadline the court will not honor any agreed settlement to be presented to the court. In such cases the defendant must then either go to trial or plead to the entire indictment without an agreed sentence.
- F. Extensions to plea deadlines will be granted for good cause. Not receiving an offer from the district attorney's office or having just received a recent offer from the district attorney general's office, however, shall not be considered good cause, nor shall a pending application for diversion unless said application was made in accordance with these local rules.
- G. It shall be the duty of the defense attorney to notify the judge's office that a negotiated plea has been reached. Failure to do so on or before the plea deadline will result in the judge refusing to accept the plea agreement absent compelling circumstances for the delay. A defendant's having just changed his or her mind will not be considered a compelling circumstance, nor will a recent counteroffer by either side.
- H. All plea agreements shall be reviewed by the circuit judge before being accepted and may be rejected or modified if he or she determines that they are not appropriate in light of the law, the rights of all parties concerned and the interests of justice. If the judge refuses to accept, or modifies, an agreement as entered into by the State and the

defendant then in that event the defendant will be allowed to withdraw his or her plea, should he or she so desire, and the case will be scheduled for trial as soon as possible.

- I. Pleas of guilty, either with or without sentence recommendations by the district attorney general's office, will normally be taken on the date upon which the trial has been scheduled. Such pleas may, however be taken at some other time designated by the court for doing so. All necessary forms should be completed, dated, signed and given to the clerk *before the opening of court* on the day the plea is to be entered unless circumstances make this impossible. Attorneys involved in such pleas shall arrive at court in sufficient time to do accomplish this task. *It shall be the duty of the district attorney general or his or her designate to insure that said forms are accurate and complete before signing them.*

RULE 57. PLEAS OF GUILTY WITHOUT AGREEMENT AS TO SENTENCE

Pleas of guilty without an agreement regarding the length and conditions of the sentence to be imposed will ordinarily be allowed only to an entire indictment, as returned by the grand jury. In other words, the defendant must plead to the entire indictment, in unamended form. Charge reduction bargaining is prohibited.

This rule may be modified only in appropriate cases, an example of which would be an acknowledgment, placed on the record by the prosecutor handling the plea for the district attorney's office, that the charging instrument does not accurately reflect the actual criminal conduct of the accused.

Pleas without agreement will be taken as soon as practicable, but no later than the scheduled trial date. At the time of accepting the plea, the judge will conduct a hearing regarding whether or not bail conditions should be modified or whether bail should be revoked. In any event, a sentencing hearing will be set as soon as practicable in such cases.

WHEREFORE, IT IS CONSIDERED, ORDERED, AND ADJUDGED, that the foregoing Rules of Circuit Court are hereby adopted and shall be forthwith entered upon the Minutes of said Court.

IT IS FURTHER ORDERED, that a copy of these Rules adopted by this court shall be furnished to the Executive Secretary of the Supreme Court of Tennessee and a copy of all amendments thereafter made shall, upon their promulgation, be filed in the same said office.

IT IS FURTHER ORDERED AND ADJUDGED, THAT THESE Rules shall become effective upon their being entered upon the Minutes of the Court.

CLAYBURN L. PEEPLES, Circuit Judge
Twenty-Eighth Judicial District of Tennessee