

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENTS TO TENNESSEE)
RULES OF CIVIL PROCEDURE) No. _____
)

ORDER

The Court adopts the attached amendments effective July 1, 1999, subject to approval by resolutions of the General Assembly.

Enter this the 26th day of January, 1999.

FOR THE COURT:

E. Riley Anderson, Chief Justice

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5.01 Service--When Required

[At the very end of this rule, add “Rules 4A, or 4B” after “Rule 4,” resulting in the following sentence:]

Unless the court otherwise orders, every order required by its terms to be served; every pleading subsequent to the original complaint; every paper relating to discovery required to be served on a party; every amendment; every written motion other than one which may be heard ex parte; and, every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar papers shall be served upon each of the parties; but no service need be made on parties adjudged in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons, or for constructive service, in Rules 4, 4A, or 4B.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 6

TIME

6.01 Computation

[Change “seven” to “eleven” in the final sentence, which will then read:]

When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

6.04 For Motions--Affidavits.--

(2) [Change the second sentence to read:]

When a motion is supported by affidavit the affidavit shall be served with the motion; except as otherwise provided in Rule 56.04 and Rule 59.02, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

Advisory Commission Comment

The expansion of seven to eleven days in the final sentence of Rule 6.01 is to eliminate confusion over whether the mailing of a five-day notice creates an eight-day period because of Rule 6.05. No longer will that be an issue, as any period less than eleven days requires exclusion of weekends and holidays.

The second sentence of Rule 6.04(2) is amended to make clear that summary judgment affidavits are governed by Rule 56.04, which contains a different service deadline.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 7

PLEADINGS ALLOWED; FORM OF MOTIONS

7.01 Pleadings

[Delete “a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party,” and substitute: “a third-party complaint, if a person who was not an original party is summonsed under the provisions of Rule 14”]

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 12

DEFENSES AND OBJECTIONS

12.01 When Presented

[Delete the following words: "except where otherwise provided by these rules or by Tenn. Code Ann. §§20-226 and 20-236"]

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 16

SCHEDULING AND PLANNING, PRETRIAL, AND FINAL
PRETRIAL CONFERENCES AND ORDERS

16.06. Sanctions

[Change Rule "37.02(2)" to "37.02"]

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

45.01 For Attendance of Witnesses--Form--Issuance

[In the second sentence delete “or other authorized officer,” such that the revised language reads:]

The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed but otherwise in blank, to a party requesting it, who shall fill it in before service.

45.04 Subpoena for Taking Depositions--Place of Deposition

[In the first sentence, delete “by an officer authorized to take depositions or,” in order that the amended language reads:]

A subpoena for taking depositions may be issued by the clerk of the court in which the action is pending.

Advisory Commission Comment

The Tennessee Constitution, Article VI, Section 12, requires that “all writs and other process . . . be signed by the respective clerks.” Consequently, Rules 45.01 and 45.04 were amended to forbid others from issuing subpoenas, as they had no constitutional power to do so.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 53

MASTERS

53.02 Powers

[Substitute "Tennessee Rule of Evidence 103" for "Rule 43.02" in the final sentence]

PROPOSED TENNESSEE RULES OF CIVIL PROCEDURE

RULE 55

DEFAULT

Rule 55.01 Entry

[Change “thirty” days to five days]

Advisory Commission Comment

The amendment returns the 30-day notice concerning default back to 5 days. Consult Rule 5.02, allowing service by mail, and Rule 6.05, mandating an extra 3 days if mail is used.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 56

SUMMARY JUDGMENT

56.04 Motion and Proceedings Thereon

[Change the second sentence to read:]

The adverse party may serve and file opposing affidavits not later than five days before the hearing.

Advisory Commission Comment

The second sentence of Rule 56.04 was amended to require opposing affidavits to be served five days, not one day, before motion day. It was thought that counsel could be better prepared for oral argument with the new deadline.