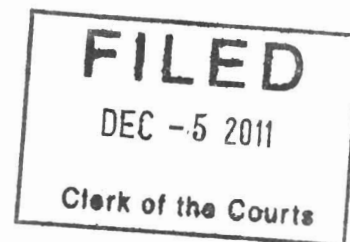


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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

No. M2011-01820-SC-RL2-RL



ORDER

The Advisory Commission on the Rules of Practice & Procedure annually presents recommendations to the Court to amend the Tennessee Rules of Appellate, Civil, Criminal and Juvenile Procedure and the Tennessee Rules of Evidence. In August 2011, the Advisory Commission completed its 2010-2011 term and presented its recommendations to the Court. On August 26, 2011, the Court filed an order publishing for public comment the Advisory Commission's proposed amendments. The public comment period ended on October 28, 2011. Those amendments are currently pending before the Court.

In its meeting on November 18, 2011, the Advisory Commission adopted proposed amendments to Rules 5.02 and 11.01 of the Tennessee Rules of Civil Procedure, adding provisions governing a lawyer's limited scope representation of a client. Those amendments had been jointly submitted to the Advisory Commission by the Access to Justice Commission ("ATJ Commission") and the Tennessee Bar Association ("TBA"). At the request of the ATJ Commission and the TBA, the Advisory Commission has transmitted the proposed amendments to this Court for possible inclusion with the other amendments currently pending before the Court.

The Court has decided to expedite the consideration of these proposed amendments. Accordingly, the Court hereby publishes for public comment the proposed amendments set out in the Appendix to this order.

The Court solicits written comments on the proposed amendments from the bench, the bar, and the public. The deadline for submitting written comments is Thursday, January 5, 2012.

Written comments should be addressed to:

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

and should reference the docket number set out above.

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

PER CURIAM

APPENDIX

*PROPOSED AMENDMENTS
PUBLISHED FOR PUBLIC COMMENT*

FORMATTING NOTE:

Attached are “redlined” versions of the proposed amended rules.
New text is indicated by underlining.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

[Amend the first paragraph of Rule 5.02 by adding the text indicated below by underlining; the other paragraphs of 5.02 and the other sections of the Rule are unchanged:]

5.01. Service — * * * *

5.02. Service — How Made. — Whenever under these rules service is required or permitted to be made on a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service shall be made pursuant to the methods set forth in (1) or (2). If an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b), service shall be made on the self-represented person and on the attorney until such time as a notice of completion of limited scope representation has been filed. After notice of completion of limited scope representation has been filed, service upon the attorney previously providing limited scope representation shall no longer be necessary.

* * * *

Advisory Commission Comment [2012]

The first paragraph of Rule 5.02 is amended to address service of pleadings and other papers in cases in which an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 11

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS;
REPRESENTATIONS TO COURT; SANCTIONS

[Amend Rule 11.01 by designating the existing paragraph as paragraph (a) and by adding new paragraphs (b) and (c); the other sections of the rule are unchanged:]

11.01. Signature. — (a) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, and Tennessee Board of Professional Responsibility number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Appearance of Counsel and Notification by Counsel Subject to Limited Scope Representation. An attorney providing limited scope representation to an otherwise unrepresented party shall file at the beginning of the representation an initial notice of limited scope representation with the court, simply stating that the representation is subject to a written limited scope representation agreement without disclosing the terms of the agreement. In addition to the initial notice of limited scope representation, when provided notice by another party, attorney or the court of a motion, pleading, discovery, hearing or other proceeding that is outside of the scope of the services provided pursuant to the limited scope representation agreement, an attorney shall promptly file a notice of limited appearance that the attorney does not represent the otherwise unrepresented party for purposes of the motion, pleading, discovery, hearing or other proceeding. The notice of

limited appearance shall simply state that the limited scope representation does not include representation for purposes of the motion, pleading, discovery, hearing or other proceeding noticed and shall not otherwise disclose the terms of the limited scope representation agreement. The notice of limited appearance shall provide the otherwise unrepresented client with the deadline(s), if any, for responding to the motion, pleading, discovery, hearing or other proceeding and shall state the date, place and time of any hearing or other proceeding. If an initial notice of limited scope representation or a notice of limited appearance is filed, service shall be made as provided in Rule 5.02.

(c) Withdrawal of Counsel Upon Completion of a Limited Scope Representation. Upon the filing of a notice of completion of limited scope representation that is accompanied by a declaration from the attorney indicating that the attorney's obligations under a limited scope representation agreement have been satisfied, and that the attorney provided the otherwise unrepresented person at least fourteen (14) days advance written notice of the filing of notice of completion of limited scope representation, the attorney shall have withdrawn from representation in the case.

11.02. Representations to Court. — * * * *

Advisory Commission Comment [2012]

Rule 11.01 is amended to add new paragraphs (b) and (c), concerning an attorney's limited scope representation of a client. An attorney's obligations under this Rule of Civil Procedure are also governed by Tenn. Sup. Ct. R. 8, RPC 1.2(c), which states: "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing." *See also* Tenn. Sup. Ct. R. 8, RPC 1.2(c), Comments [6] – [8]. Note, however, that paragraph (b) of this Rule goes further than RPC 1.2(c) and requires that an agreement for limited scope representation, as it relates to a proceeding governed by this Rule, must be in writing.

Nothing in this rule prohibits an attorney providing limited scope representation from withdrawing with leave of the court prior to completion of the terms set forth in the limited scope representation agreement.