

WILLIAM D. VINES, III *†
JAMES C. WRIGHT
G. KEVIN HARDIN
EDWARD U. BABB
JOHN W. BUTLER
WELDON E. PATTERSON*
LOUIS W. RINGGER (BILLY)
GRANT E. MITCHELL

Of Counsel

RONALD C. KOKSAL
DONNA R. DAVIS *
LESLIE A. MUSE
JAMES KELLY GIFFEN

*Rule 31 Listed General
Civil Mediator

†Board Certified Civil Trial Advocate
National Board of Trial Advocacy

**BUTLER
& VINES
BABB**
Attorneys at Law

September 24, 2019

Butler, Vines and Babb, P.L.L.C.
2701 Kingston Pike
Knoxville, Tennessee
37919

Telephone: (865) 637-3531
Facsimile: (865) 637-3385
Web: www.bvblaw.com

RECEIVED
SEP 26 2019
Clerk of the Courts
Rec'd By *LM*
TRCP R26.07

Firm Medical Consultant
FRED GRELO, MD

Sender:
James C. Wright
Partner
Direct Dial: (865) 244-3920
E-mail: jwright@bvblaw.com

James Hivner, Clerk
Re: 2020 Rules Package
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

Re: T.R.C.P. - ADM 2019-01444

Dear Mr. Hivner:

I am submitting the following comments as it would relate to the advisory commission's recommendations to the Court, said comments being submitted within the December 13, 2019 deadline.

Proposed Change to Rule 26.07 - Mandatory Disclosures

I have not seen a statement of the reason or need for the recommendation in regard to this drastic and significant change to the TRCP. The existing rules provide adequate and sufficient means to obtain discovery as parties may need, while at the same time protecting doctrines such as work product, attorney-client privilege, matters and information obtained "in anticipation of litigation." This rule appears to attempt to abrogate or certainly an argument would be made that said rule would abrogate same. For instance, either a plaintiff attorney or a defendant attorney may spend significant time and money investigating a matter and may learn both positive and negative matters during their investigation. In a significant construction products liability or medical malpractice matter, this could be in the tens of thousands, if not more. Rule 26.07 would appear to require and impose a continuing duty to disclose such information and impose a duty upon the attorney signing by way of verification subjecting to sanctions.

Further, one of the reasons that many parties (and attorneys) seek to avoid Federal Court are the additional costs to the clients in relationship to compliance with rules, including the Federal rule on disclosure. This rule alone in Federal Court generates significant time (and

thereby costs to the client for compiling and creating the information necessary for this disclosure). Parties also still get interrogatory sets that they also have to comply with as well. Therefore, practicing in Federal Court is significantly more costly to parties than it is in State Court.

Beyond this, the rule will create its own "cottage industry" of practice relating to motions to declare disclosures inadequate, incomplete or simply not filed timely. For a *pro se* litigant, this rule would likely make access to courts impossible. In fact, this rule change contemplates the creation of an enforcement practice relating to the disclosures in the verification process, as well as a change to Rule 37 to provide for a sanctions mechanism. In essence, we are simply creating another whole realm of unnecessary pleadings, when the very matters sought can be obtained through ordinary discovery. This rule disadvantages parties that have significant monies to obtain information through their counsel by requiring them to divulge this information to parties who have not prepared or done their homework, while at the same time also disadvantages clients who are not wealthy enough to go through the efforts to comply with an additional layer of discovery process, as well as motions that will be generated that their disclosures were inadequate and untimely.

In short, I do not see a modified federal disclosure system as being an improvement over the present Tennessee system, when as an attorney I can obtain the same information through discovery without the unnecessary costs that the federal courts burden a party with to comply with this rule. There simply appears to be no true compelling reason to create an entire new set of motion practices relating to disclosures.

At present, when I meet with a client I will go through with them generally the costs of different matters and steps in litigation. The disclosure requirements by their very nature add an additional cost factor to the client. Even in a relatively straightforward and small case, the requirement to investigate and put together disclosures, supplement the disclosures and deal with motion practices relating to it will add thousands of dollars to the litigation costs. In a large case involving a products matter, construction issue or a medical malpractice, the costs could be in the tens of thousands of dollars. While this proposed rule change is well meant, it simply creates a cost factor for clients that is unnecessary in light of the current rules that provide the basis to obtain adequate discovery and creates a whole new realm of motion practices that would unnecessarily burden litigants, lawyers and the courts.

The Tennessee Rules of Civil Procedure in regard to discovery are not broken. They work adequately. This extra burden does not enable a party to gain any particular additional evidence that could not be obtained through ordinary discovery. At the same time, however, it creates the potential for an argument that long-standing principles relating to work product and matters prepared in anticipation of litigation may be abrogated by this rule and creates a mine field for compliance.

James Hivner, Clerk
September 24, 2019
Page 3

BUTLER
& VINES
BABB
Attorneys at Law

I would request that Rule 26.07 be left as is, as well as Rule 37. This is not meant as any negative to the Committee and is hopefully not taken as such.

Very truly yours,



James C. Wright

JCW/pad

appellatecourtclerk - Tennessee Supreme Court Proposes Mandatory Pretrial Discovery Disclosures in Divorce Litigation

From: Zale Dowlen <zale.dowlen@outlook.com>
To: "appellatecourtclerk@tncourts.gov" <appellatecourtclerk@tncourts.gov>
Date: 8/21/2019 10:05 AM
Subject: Tennessee Supreme Court Proposes Mandatory Pretrial Discovery Disclosures in Divorce Litigation
Cc: Kimi deMent <Kimi.deMent@tncourts.gov>

Dear Court:

Thank you for the comment period on this issue. As an attorney who assists low income individuals and who handles a few divorces, this proposal seems to create an even greater chasm between the low income individuals, who want and/or need a divorce, and the ability to get one. Essentially, this proposal only assists the trial attorneys who need an excuse for unnecessary discovery.

This seems to run contrary to the "Access to Justice" mindset that the court has been striving to achieve. I hope this helps.

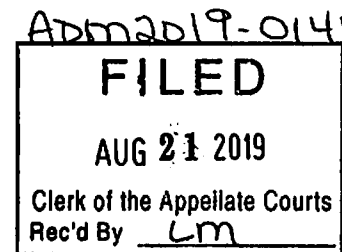
Zale Dowlen, Esq
Attorney & Counselor at Law
www.DowlenLaw.com

Mailing:
PO Box 335
Goodlettsville, Tennessee 37070-0335

Office:
The Smith & Sellers Building
100 North Main Street, Suite N
Goodlettsville, Tennessee
(Entrance and parking is in the rear of the building on Lick Street.)

Phone: [\(615\) 497-0763](tel:6154970763)
Fax: [\(888\) 840-4269](tel:8888404269)

"Your plans will fall apart right in front of you, if you fail to get good advice.
But if you first seek out multiple counselors, you'll watch your plans succeed."
Proverbs 15:22 TPT



Rule 26

appellatecourtclerk - Rukle 26 Mandatory Disclosures

ADM2019-01444

FILED

SEP 23 2019

Clerk of the Appellate Courts
Rec'd By LM

From: William cremins <wmcremins@gmail.com>
To: <appellatecourtclerk@tncourts.gov>
Date: 9/20/2019 10:47 AM
Subject: Rukle 26 Mandatory Disclosures

TENNESSEE RULES OF CIVIL PROC.

As you solicited comments about mandatory disclosure in civil actions, I write to endorse the idea.

Especially in personal injury cases, disclosure of information, such as data and information required maintained by federal and/or state law ought to be disclosed without a request.

In truck crash litigation, for example, the truck company should mandatorily tender to the plaintiff all documents and things required maintained by the Federal Motor Carrier Safety Regulations, including the driver's personnel file, logs for three months before the crash, trip records for the last three months before the crash including bills of lading, contracts incident to the load(s) carried at the time of a crash and lease agreements for the tractor, trailer, and any leased equipment involved in the crash, radio frequency device information, geolocation data for the last three months before the crash, and history of driving infractions of the truck driver. Drug tests of the truck driver also ought to be subject to mandatory disclosure if performed after a crash. This will expedite discovery, facilitate settlement, and relieve judges of discovery disputes.

In divorce cases, local rules of some counties require tendering financial affidavits of income and expenses, and certain documents and things pertaining to electronically stored information. Each party to a divorce ought to be required to share any investment documents and pension documents involving marital property. Each ought to provide the other a list of insurance products, including sums paid into any insurance products, without a request for same.

Bill Cremins