

**LOCAL RULES OF PRACTICE
for the GENERAL SESSIONS -
FAMILY COURT DIVISION III
of WILSON COUNTY, TENNESSEE**

Rule 1. Scope and Purpose

These rules shall govern the practice and procedure in the General Sessions Family Court, Division III of Wilson County, Tennessee. These rules supersede all Rules of Practice and Procedure in the General Sessions Division III Court of Wilson County, Tennessee, adopted previously.

These rules are adopted in conformity with *Tennessee Supreme Court* Rule 18. These rules are in addition to and are not a substitute for the existing rules in the Courts of Record for the Fifteenth Judicial District. To the extent that the existing rules for Chancery Court, Circuit Court, and Criminal Court are inconsistent with these rules, then these local rules prevail.

Any of the rules herein enacted may be waived or modified by special order of the Court when in the Court's opinion such waiver or modification is necessary in order to do justice or to arrive at the equities of the case between or among the parties involved.

Rule 2. Courtroom Decorum

There will be no smoking, eating or chewing of gum in the courtroom. Lawyers, court personnel and all parties and witnesses will be appropriately dressed while in Court attendance. There will be no pagers, telephones or other wireless devices allowed in the courtroom unless the device is completely turned off and stored out of sight.

Rule 3. Form of Pleading

All pleadings filed or presented to this Court shall be on letter-sized (8 ½" x 11") paper in Times New Roman 12 point or larger. An original pleading shall be filed in all causes and shall be accompanied by sufficient copies necessary for service upon the parties and sibling files. All contempt actions will be commenced by sworn petition and leading process. The Court will not recognize any "motion" for contempt.

Rule 4. Counsel of Record; Entry of Appearance

All counsel who have entered an appearance in a case will be 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 with appropriate certificate of service;
- (d) appointment by the Court.

Rule 5. Setting Cases, Motions and Pre-Trial Hearings

- (a) The Judicial Secretary will set all cases at issue for trial and all motions and other matters for hearing, and give notice thereof, excluding Probate matters which shall be set by the Clerk & Master. Persons desiring special settings and hearings should contact the office of the Court.
- (b) The Court with or without oral argument may decide pre-trial motions. If any counsel or pro se party is unavailable upon a day on which a motion is set for oral argument, such counsel or pro se party shall obtain another date acceptable to the Court and all other counsel, and shall submit an order before the date of the scheduled hearing approved by all counsel and pro se parties setting the motion for hearing on such alternate date.

Rule 6. Continuances

Cases set for trial or hearing may be continued only by order or leave of the Court.

* **Rule 7. Limitations on Filing Discovery Material, Interrogatories, Requests to Admit and Requests for Documents**

- (a) *Documents not to be filed.* Pursuant to Tenn. R. Civ. Pro. 5.05, the following shall not be filed with the Court except pursuant to special order of the Court or for use in proceedings: depositions upon oral examination; interrogatories; requests for documents; requests for admissions; and answers and responses thereto.
- (b) *Number.* No party shall serve upon any other party more than 25 interrogatories or requests to admit, however numbered, lettered or sub-divided, without leave of Court. If a party is served with interrogatories or requests to admit exceeding 25, response to only the first 25 shall be made. Any motion seeking leave to serve more than 25 interrogatories or requests to admit shall set out each additional interrogatory or request to admit together with the reason establishing good cause for exceeding the limit of 25.
- (c) *Responses.* The response to each interrogatory or request to admit or requests for documents shall be preceded by the interrogatory or request to admit.
- (d) *All Parties.* Whenever a request for discovery is made, the party seeking discovery shall serve each party with a copy of the request. Such service shall be made regardless of whether the discovery sought is directed to only one of the multiple parties. Likewise, each response to a request for discovery shall be served on each party in the case.

Rule 8. Guardian ad Litem

In all cases involving the appointment of a guardian ad litem, the party seeking relief shall present the Court with a proposed order providing for the appointment of a guardian ad litem leaving a space blank for the Court to insert the name of the guardian ad litem. The Court may appoint a guardian ad litem either on its own motion or at the request of any party when the Court deems such an appointment to be appropriate in accordance with Supreme Court Rule 40(a). Written reports filed by guardians ad litem shall be lodged with the Court not less than 24 hours in advance of a scheduled hearing.

Rule 9. Motions to Compel Discovery

All motions to compel discovery shall be signed and filed with the clerk, shall include a certificate of service to the adverse party or counsel and may be accompanied by a proposed order. The proposed order will be tendered by the clerk to the Judge for entry ten (10) days after filing the motion unless the adverse party or counsel requests in writing a hearing prior to the expiration of the ten (10) day period. Any motion to compel discovery not accompanied by a proposed order will be set for hearing by the Judge's administrative assistant.

Rule 10. Extension of Time for Responses to Discovery

As provided in Tenn. R. Civ. P. 29, written stipulations extending the time for responding to interrogatories, requests for production and requests for admissions may be made without approval of the Court provided such stipulated extension is not in conflict with an order of the Court.

Rule 11. Time for Hearings

- (a) Motions requiring proof will be heard at 9:00 a.m. on Thursdays. Motions not requiring proof may be set at alternate times through the Judicial administrative assistant.
- (b) Appropriate notice shall be published when the Court will not have a motion docket on a Thursday.
- (c) The Court will endeavor to arrange its motion dockets to minimize delay for lawyers. If a lawyer is aware that an argument will be prolonged, the lawyer shall attempt to set the motion specially.

Rule 12. Mediation and Parenting Plans

Parties shall be made aware by the lawyers that mediation services are available and may be ordered at the discretion of the Court in contested cases. In every case involving parenting time, including juvenile cases, each party shall offer a written, proposed Permanent Parenting Plan.

Rule 13. Extraordinary Relief

In any case where extraordinary relief is requested, a sworn Petition must be filed. The Court will determine whether the matter is an emergency and should be heard immediately *ex parte* or whether all parties can be given notice prior to the hearing on the request for extraordinary relief. Any request for extraordinary relief must comply with statutory requirements and Rules 65, *Tennessee Rules of Civil Procedure*.

Restraining Orders. No restraining order shall be granted unless notice is given to opposing party or good cause for dispensing with notice is shown and supported by affidavit. Proposed restraining orders shall be prepared by counsel prior to submitting the request for relief to the Court.

Rule 14. Dormant Cases

To expedite cases, the Court may take reasonable measures to purge the docket of old cases where the cases have been dormant with cause shown for an extended time

Rule 15. Pre Trial Statement - Witness and Exhibit Lists

In all cases set for adjudication and/or disposition, a Certificate of Readiness containing the following shall be filed with the Court and served upon all parties no later than seventy-two (72) hours (excluding non-judicial days) prior to the scheduled hearing:

- (a) *A Witness List* - including the names, addresses and phone of all witnesses, including impeachment and rebuttal witnesses.
- (b) *An Exhibit List* - copies of exhibits to be proffered at trial. Exhibits which are not easily capable of photocopy reproduction, shall be specifically identified and made available for inspection by opposing counsel. Exhibits which include audio or video recordings shall likewise be specifically identified and made available for inspection.
- (c) *Pretrial Affidavit and Property List.* No later than 72 hours (excluding non judicial days) prior to trial in actions for divorce, both parties shall file an affidavit outlining their income and their expenses together with a list of property and debts listing their separate property and marital property; listing their debts; proposing a division of the marital property and marital debts; and if alimony or spousal support is demanded, the type, amount, duration, and the statutory basis for the granting of the demand. Should the parties dispute a classification of property as being separate or marital, they shall separately list the same in their affidavit as disputed. The attached form shall be used to accomplish this purpose. No later than 72 hours (excluding non judicial days) prior to trial, the parties shall also exchange copies of their U.S. Income Tax Returns for the 2 tax years next preceding the trial date, regardless of whether the returns were filed by the parties with each other jointly. If a party's tax return has not been filed for either or both of the 2 tax years next preceding the trial date, that party, in lieu of the tax return or tax returns not filed, shall give to the other party copies of all of the documents that reflect all of the income for the party for each of the 2 years for which a tax return has not been filed.

Failure to comply with this rule could result in sanctions to the attorneys and/or offending party(ies), including but not necessarily limited to the possible exclusion of evidence.

Rule 16. Application For Fees

All applications for attorney's fees and expenses shall be supported by a statement, verified by the attorney under oath, setting forth in detail the basis for the fees sought. The criteria in Tenn. Sup. Ct. R. 8, RPC 1.5, will control the awarding of the attorney's fees. The Court will not grant attorney fee judgments to withdrawing counsel without a written consent to judgment signed by the party to be bound.

Rule 17. Entry of Orders and Decrees

The prevailing party upon any motion or trial shall prepare an appropriate order or judgment for entry in the case. The judgment or order shall be filed with the Clerk within seven (7) business days following the Court's ruling or trial. It shall be approved by all counsel of record and any pro se parties, or shall bear a certificate of service on any counsel or pro se party who refuses to approve it.

Any counsel or pro se party who refuses to approve an order of judgment shall file an alternate proposed order or judgment with the Clerk within 3 business days following service of the proposed order or judgment filed by the prevailing party. Such alternate proposed order or judgment shall bear a certificate of service and be lodged with the Clerk.

Any Agreed Order that is announced in open court on the record does not have to be circulated to parties for their signature(s) prior to being submitted to the Clerk but must state in the body of the Order that the agreement was announced in open court, unless otherwise specified.

Rule 18. Special Procedures Related to the Probate Jurisdiction of the Court

18.01 Attorneys

With the exception of applications to open an estate pursuant to the small estate exemption and to the filing of claims against an estate, all persons and entities appearing before the Court shall be represented by, and all petitions and motions shall be filed by, attorneys licensed to practice law in Tennessee except as otherwise provided by the Rules of the Supreme Court of Tennessee. With respect to commercial claims against an estate, if an exception has been filed, the claimant must be represented by an attorney at the hearing on the claim.

18.02 Estates of Decedents

- (a) *Proceedings before the Probate Master:* Petitions to probate in common form, petitions to appoint an administrator of an intestate estate and small estate administration proceedings may be heard by the Court or by the probate master. The probate master may hear these matters provided that the petition and all accompanying documents are in proper order, as determined by the probate master, and that there are no questions of law to be determined. If the probate master declines to hear the petition, the petition is to be heard by the Court.
- (b) *Holographic Will Proceedings:* All petitions for the probate of holographic testamentary instruments will be heard by the Court. The testimony of witnesses concerning the handwriting of the decedent must be taken in open Court. Upon written motion and showing of good cause, the Court may allow such evidence to be taken by affidavit or oral deposition.
- (c) *Solemn Form Proceedings:* Petitions to probate in solemn form must be heard by the Court. Service of process shall be made upon all necessary parties in the manner required by law.
- (d) *Proceedings to Administer Intestate Estates:* Anyone applying for letters of administration on the estate of a decedent shall give written notice of the time and place that the application will be presented to the surviving spouse and to all next of kin having the same priority as the applicant to administer the estate in question; except no such notice shall be required if the applicant is unable, after reasonable inquiry, to determine the names and/or addresses of such persons entitled to notice.

18.03 Sale of Real Estate

- (a) *Petition to Sell Real Property:* Fiduciaries who desire to sell real property of a decedent must file a petition to obtain Court approval. All persons having an interest in the property shall be properly notified of the proceeding. All Court sales shall be conducted in accordance with applicable statutes. However, executors specially authorized under a will to sell real estate are not required to obtain Court approval.
- (b) *Motion to Approve Contract:* In the event a fiduciary has been authorized by the Court to sell property the order may, at the request of the fiduciary or in the discretion of the Court, require that any contract for sale be approved by the Court and in such event, the contract shall expressly provide that it is subject to Court approval.

18.04 Adversary Proceedings

Adversary proceedings shall be prepared, discovery conducted and tried as a civil action pursuant to Tennessee Rules of Civil Procedure, Rules of Evidence and these Local Rules.

Adversary proceedings include, but are not limited to, civil actions as defined under Rule T.R.C.P. 2 and proceedings to remove a fiduciary, surcharge a fiduciary, probate a lost or destroyed will, determine beneficiaries, construe a will, cancel a devise, partition property for the purposes of distribution, will contest, actions for revocation of probate of a will and actions to terminate a trust or other trust proceedings and any other such proceedings.

18.05 Setting Hearings

All hearings on probate matters shall be scheduled through the Clerk and Master. Guardians ad Litem will file their written report(s) with the Court at least twenty-four (24) hours prior to the scheduled hearing.

18.06 Order and Decrees

Orders which waive bond, inventory or accounting shall expressly set forth the grounds of such waiver. All orders shall state the date upon which the matter was heard or docketed for hearing and be presented to the Court within seven days thereafter unless additional time is expressly granted by the Court.

18.07 Instructing Clerk to Invest Funds

The Clerk is to invest funds in an interest bearing account only when there is a specific order directing her to do so. Such order should suggest the period of time the funds should be invested. All such orders must contain the full legal name, address and last four digits of the social security number of the person whose funds are being invested. The full social security number of the person shall be provided to the Clerk to be filed under seal. In guardianships, the date of birth and date the minor shall become eighteen (18) years of age shall be stated in the order.

Rule 19. Service of Process, Subpoenas and Other Documents

Unless the Court otherwise orders, every pleading or other document filed with the Court subsequent to the original petition shall be served on all parties and shall contain a certificate of service. The certificate of service shall contain the date and manner of service and the names and locations of the person served.

Service of process shall be issued by the Clerk of the General Sessions Division III Court completed by any means reasonably sufficient to insure the person has notice pursuant to statute.

After service of process is effectuated by personal service, subsequent notice may be made by mail or in open court. All counsel shall appear at all proceedings unless excused by the Judge. No further personal service is necessary.

Subpoenas shall be governed by Rule 45 of Tennessee Rules of Civil Procedure.

Rule 20. Legal Advice by Court Personnel

All court personnel are forbidden from interpreting any rules of procedure or giving any legal advice of any description whatsoever. Notice is hereby given to all persons that court personnel assume no responsibility for any misinformation regarding substantive law, procedural rules, local rules or local customs.

Rule 21. Court Costs

All orders and judgments which tax costs shall contain both the current home address and employment address of those charged with all or any part of the costs of the cause and shall be signed by the tendering party(ies) or their counsel. In any event, the bill of costs may be sent to those responsible for costs in care of the attorney for such responsible person(s). Sureties on bonds may only be released upon compliance with Tenn.Code Ann. §29-33-101 et seq. and with a provision for a substitute surety.

Rule 22. Withdrawal of Counsel

No attorney may be allowed to withdraw except for good cause and by leave of Court upon written Motion after notice to all parties. The attorney's cost bond shall survive any permitted withdrawal, absent contrary order of the Court.

Rule 23. 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 Rules of Professional Conduct and the Code of Judicial Ethics.

Rule 24. Citation

These rules may be cited as G. S. Div. III "Local Rule § _____."

These Local Rules of the General Sessions Family Court Division III for Wilson County, Tennessee are hereby adopted as revised on this the _____ day of June, 2012.

Judge John T. Gwin