

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
DEC 18 2012
Clerk of the Courts

IN RE: AMENDMENTS TO TENNESSEE
RULES OF CIVIL PROCEDURE

No. M2012-01977-SC-RL2-RL

ORDER

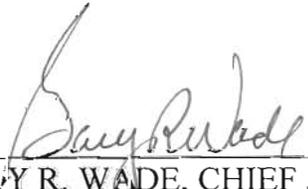
The Court adopts the attached amendments effective July 1, 2013, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

- RULE 2 ONE FORM OF ACTION;
- RULE 3 COMMENCEMENT OF ACTION;
- RULE 3A ENFORCEMENT OF FOREIGN JUDGMENTS;
- RULE 7 PLEADINGS ALLOWED; FORM OF MOTIONS;
- RULE 45 SUBPOENA;
- RULE 54 JUDGMENTS AND COSTS;
- RULE 55 DEFAULT;
- RULE 62 STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

The text of each amendment is set out in the attached Appendix.

IT IS SO ORDERED.

FOR THE COURT:



GARY R. WADE, CHIEF JUSTICE

APPENDIX

**2013 AMENDMENTS TO THE
TENNESSEE RULES OF CIVIL PROCEDURE**

In the attached amended rules, ~~overstriking~~ indicates deleted text
and underlining indicates added text.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 2

ONE FORM OF ACTION

[Add the new Advisory Commission Comment below; the text of the Rule is unchanged:]

All actions in law or equity shall be known as “civil actions.”

Advisory Commission Comment [2013]

The 2013 Advisory Commission Comment to Tenn. R. Civ. P. 3 provides guidance for determining whether a statutorily authorized “petition” is considered a “complaint” or a “motion” for purposes of the Rules of Civil Procedure.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 3

COMMENCEMENT OF ACTION

[Add the new Advisory Commission Comment below; the text of the Rule is unchanged:]

All civil actions are commenced by filing a complaint with the clerk of the court. An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. If process remains unissued for 90 days or is not served within 90 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

Advisory Commission Comment [2013]

Rule 2 provides that “[a]ll actions in law or equity shall be known as ‘civil actions.’” The initial Advisory Commission Comment to Rule 2 explains that, “[p]rior to adoption of these Rules, Tennessee practice spoke of ‘civil actions at law’ (Tenn. Code Ann. § 20-2010 [repealed] and of ‘suits’ in chancery (Tenn. Code Ann. § 21-102) [repealed]. Rule 2 simplifies the terminology of applying a single term to all civil actions.” Consistent with that explanation, Rule 3 goes on to provide (in pertinent part) that “[a]ll civil actions are commenced by filing a *complaint* with the clerk of the court.” (Emphasis added.)

Although Rules 2 and 3 simplified the terminology previously applied to “civil actions at law” and “suits” in chancery, those rules—as well as Rule 7—are silent as to their application to “petitions” authorized by statute. *See, e.g.*, Tenn. Code Ann. §§ 4-5-322 (2011) (petition for judicial review under Administrative Procedures Act); 4-21-307 (2011) (petition for judicial review of order of Human Rights Commission); 27-8-106 (2000) (petition for writ of certiorari); 29-3-103

(2000) (“bill or petition” to abate a public nuisance); 29-16-104 (2000) (petition to take land by eminent domain); 29-27-106 (2000) (“bill or petition” for partition); 30-1-117 (“verified petition” to apply for letters of administration or letters testamentary to administer the estate of a decedent); 34-3-102 (2007) (petition for appointment of a conservator); 36-3-602 (2010) (petition for order of protection); 36-5-405 (2010) (petition to set, enforce, modify or terminate support); 36-6-108 (2010) (petition to alter visitation/parental relocation); 36-6-306 (2010) (petition for grandparent visitation); and 36-6-405 (2010) (petition to modify permanent parenting plan). Depending on the nature of a statutorily authorized “petition,” the petition might be considered a “complaint” for purposes of these Rules, or it might be considered a motion relating to a pending civil action. In determining whether or not a statutorily authorized petition is a “complaint” for purposes of these Rules, the court must give effect to the substance of the pleading, rather than its form. *See, e.g., Brundage v. Cumberland Cnty.*, 357 S.W.3d 361, 371 (Tenn. 2011); *Abshire v. Methodist Healthcare-Memphis Hosp.*, 325 S.W.3d 98, 104 (Tenn. 2010); *Ferguson v. Brown*, 291 S.W.3d 381, 386-87 (Tenn. Ct. App. 2008). As the Supreme Court has stated, “a trial court is not bound by the title of the pleading, but has the discretion to treat the pleading according to the relief sought.” *Norton v. Everhart*, 895 S.W.2d 317, 319 (Tenn. 1995).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 3A

ENFORCEMENT OF FOREIGN JUDGMENTS

[Add new Rule 3A – which is a separate rule from Rule 3 – as set out below:]

3A.01. Enrollment of Foreign Judgments. — Enrollment of a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act, T.C.A. §26-6-104, does not require filing of a complaint, but shall be by

(1) Filing with the clerk of the Circuit Court or the Clerk & Master of the Chancery Court, a copy of a foreign judgment authenticated in accordance with the Acts of Congress or the statutes of this state;

(2) Filing an Affidavit executed by the judgment creditor or the judgment creditor's lawyer, setting forth the name and last known post office address of the judgment debtor and the judgment creditor;

(3) Filing a Notice of Filing that provides a description of the judgment creditor, judgment debtor, name and last known post office address of the judgment debtor and the judgment creditor and notice that the judgment creditor is enrolling a foreign judgment in Tennessee; and

(4) Paying the appropriate filing fee to the Clerk for opening a miscellaneous file.

3A.02. Notice of Filing. — The following form of Notice of Filing, when completed, provides sufficient information to comply with the notice required under 3A.01(3) above;

IN RE PROCEEDING TO ENFORCE JUDGMENT AGAINST
[INSERT NAME OF JUDGMENT DEBTOR]

NOTICE OF FILING

Judgment creditor [insert name of judgment creditor] hereby gives notice that he/she/it is enrolling a foreign judgment in Tennessee pursuant to the Uniform Enforcement of Foreign Judgments Act.

The following documents are attached in support of this notice:

- (a) A copy of a foreign judgment authenticated in accordance with the Acts of Congress or the statutes of this state.
- (b) An Affidavit executed by the judgment creditor or the judgment creditor's attorney, setting forth the name and last known post office address of the judgment debtor and the judgment creditor.

C O S T B O N D

I hereby acknowledge and bind myself for the prosecution of this action and payment of all costs in this court which may at any time be adjudged against the plaintiff in the event said plaintiff shall not pay the same.

Witness my hand this _____ day of _____
, 20__.

Surety

Address

3A.03. Clerk's Duties. — On receipt of the copy of the foreign judgment, the Notice of Filing, and the affidavit, the clerk shall:

(1) Promptly open a case number file, and

(2) Issue a summons to be delivered for service to any person authorized to serve process for service upon the judgment debtor, including a copy of the Notice of Filing to be served upon the judgment debtor, a copy of the foreign judgment authenticated in accordance with the Acts of Congress or the statutes of this state, and a copy of the Affidavit filed by the judgment creditor or the judgment creditor's lawyer.

3A.04. Enrollment and Execution. — If the judgment debtor does not file a response or answer within thirty (30) days after service, the Clerk shall

(1) Enroll the judgment; and

(2) Upon the filing of a request for execution, issue the execution, by garnishment, attachment, or as otherwise requested, without requiring further order from the Court.

Advisory Commission Comment [2013]

Tennessee trial courts have not followed a uniform procedure in enrolling and enforcing foreign judgments. Some trial courts have considered that a complaint or motion for default is necessary under the Rules of Civil Procedure to enroll or enforce by execution a domesticated foreign judgment, despite the adoption of the Uniform Enforcement of Foreign Judgments Act, Tenn. Code Ann. §§ 26-6-104 – 108 (2000 & Supp. 2011). The Act's purpose to streamline the procedure for enrolling and enforcing foreign judgments is hampered by courts' uncertainty whether enrolling a foreign judgment should be treated as commencing a civil action, requiring commencement by a complaint and, upon lack of response by the judgment debtor after service, requiring entry of a default upon proper motion.

Rule 3A has been adopted to ensure that trial courts follow the same process throughout the state. It makes clear that where a foreign judgment is enrolled pursuant to the Act and is undisputed, no complaint is necessary to enroll the judgment or issue execution upon it. Similarly, no motion for default or entry of default judgment is necessary before execution may issue. *See also* Advisory Commission Comment [2013] to Tenn. R. App. P. 55.

If a judgment debtor does dispute the Notice of Filing Foreign Judgment, Tennessee's Uniform Enforcement of Foreign Judgments Act entitles the debtor to a trial on the merits concerning the underlying validity of the judgment, and the Tennessee Rules of Civil Procedure govern the trial on the merits on that answer and response.

STATE OF TENNESSEE

In the _____ Court of _____ County

_____, Plaintiff(s),

vs.

_____, Defendant(s)

No. _____

SUMMONS for ENFORCEMENT OF FOREIGN JUDGMENT

TO: _____
Defendant Address

Defendant Address

You are hereby notified that a judgment creditor has filed in the _____ Court of _____ County, Tennessee in the above styled case a judgment entered against you in another state. If you object to entry of this judgment or the foreign judgment is on appeal, you must file a response or answer objecting to the enrollment of this judgment in the office of the _____ Court Clerk of _____ County, Tennessee on or before thirty (30) days after service of this summons upon you. If you fail to do so, the Clerk may issue execution on the foreign judgment against you.

WITNESSED and Issued this _____ day of _____, 20____.

_____, _____ Court Clerk

By _____, Deputy Clerk

ATTORNEY FOR PLAINTIFF: _____

PLAINTIFF'S ATTORNEY'S ADDRESS: _____

PLAINTIFF'S ADDRESS: _____

Received this _____ day of _____, 20____

By: _____

Deputy Sheriff

State of Tennessee

County of _____

I, _____, Clerk of the _____ Court, in and for the State and County aforesaid, hereby certify that the within and foregoing is a true and correct copy of the original writ of summons issued in this case.

_____, _____ Court Clerk

By _____, D.C.

OFFICER'S RETURN

I certify that I served this summons together with the foreign judgment, notice of filing of foreign judgment, and affidavit of the judgment creditor as follows:

On _____, 20____, I delivered a copy of the summons, enrolled foreign judgment, and creditor's affidavit to the defendant, _____

Failed to serve this summons within 30 days after its issuance because: _____

_____, Sheriff

_____, Deputy Sheriff

CLERK'S RETURN

I hereby acknowledge and accept service of the within summons and receive copy of same, this _____ day of _____, 20____.

Defendant

_____, _____ Court Clerk

By _____, D.C.

NOTICE TO DEFENDANT(S)

Tennessee law provides a ten thousand (\$10,000.00) personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt, with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 7

PLEADINGS ALLOWED; FORM OF MOTIONS

[Add the new Advisory Commission Comment below; the text of the Rule is unchanged:]

7.01. Pleadings. — There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or to a third-party answer.

7.02. Motions and Other Papers. — (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

7.03. Demurrers, Pleas, etc., Abolished. — Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Advisory Commission Comment [2013]

The 2013 Advisory Commission Comment to Tenn. R. Civ. P. 3 provides guidance for determining whether a statutorily authorized “petition” is considered a “complaint” or a “motion” for purposes of the Rules of Civil Procedure.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

[Amend Rule 45 by adding the underlined text and deleting the overstricken text below; the Advisory Commission Comments to Rule 45 are unchanged, except a new sentence is added to the 2012 Comment to Rule 45.01, and new 2013 Comments are added, as set out below:]

45.01. For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the clerk, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the time and place and for the party therein specified. ~~The subpoena also must state in prominently displayed, bold-faced text: “The failure to file a motion to quash or modify within fourteen days of service of the subpoena waives all objections to the subpoena, except the right to seek the reasonable cost for producing books, papers, documents, electronically stored information, or tangible things.”~~²² 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.

45.02. For Production of Documents and Things or Inspection of Premises. * * * *

45.03. Service. * * * *

45.04. Subpoena for Taking Depositions — Place of Deposition. (1) A subpoena for taking depositions may be issued by the clerk of the court in which the action is pending. A

subpoena for taking depositions may be served at any place within the state. If the subpoena commands the person to whom it is directed to produce designated books, papers, documents, electronically stored information, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26.02, the subpoena will be subject to the provisions of Rules 30.02, 37.02, and 45.02, and 45.07. A deposition subpoena for testimony or subpoena for production of documentary evidence also must state in prominently displayed, bold-faced text: “The failure to serve an objection to this subpoena within twenty-one days after the day of service of the subpoena waives all objections to the subpoena, except the right to seek the reasonable cost for producing books, papers, documents, electronically stored information, or tangible things.”

(2) A resident of the state may be required to give a deposition only in the county ~~wherein~~ where the person resides or is employed or transacts his or her business in person, or at such other convenient place as is fixed by an order of the court.

45.05. Subpoena for a Hearing or Trial — Personal Attendance. * * * *

45.06. Contempt. * * * *

45.07. Protection of Persons Subject to Subpoena. ~~Upon motion made within fourteen days after the subpoena is served or before the time specified in the subpoena for compliance therewith, whichever is earlier, the Court may: (1) quash or modify the subpoena if it is unreasonable and oppressive; or (2) condition denial of the motion upon the advancement by the~~

~~person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, electronically stored information, or tangible things. The timely filing of a motion to quash or modify obviates the need for compliance with the subpoena pending further order of the court. The failure to file a motion within the time period specified herein waives all objections to the subpoena except the right to seek the reasonable costs for producing books, papers, documents, electronically stored information, or tangible things.~~

(1) A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a non-party witness subject to the subpoena and shall provide the non-party witness at least twenty-one (21) days after service of the subpoena to respond, absent agreement of the non-party witness or a court order.

(2) A non-party witness commanded to give deposition testimony or to produce documents or tangible things or to permit inspection shall serve on the party or attorney designated in the subpoena a written objection, if any, to having to give testimony or to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. Such objection must be served on the party or attorney designated in the subpoena within twenty-one days after the subpoena is served.

(3) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling testimony, production or inspection.

(4) The Court may: (1) grant the motion to compel testimony or production or inspection, or modify the subpoena if it is unreasonable and oppressive; or (2) condition the grant of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, electronically stored information, or tangible things. The timely service of an objection obviates the need for compliance with the deposition subpoena pending further order of the court. The failure to serve an objection within the time period specified herein waives all objections to the subpoena except the right to seek the reasonable costs for producing books, papers, documents, electronically stored information, or tangible things.

45.08. Duties in Responding to Subpoena. * * * *

Advisory Commission Comment [2012]

45.01: Rule 45.01 is amended to ensure that persons served with subpoenas receive adequate notice, simultaneously with service, that, as provided for in Rule 45.07, the failure to file a motion to quash or modify within fourteen days of service of the subpoena will result in the waiver of the right to seek relief from the subpoena (other than the right to seek the reasonable costs for producing books, papers, documents, electronically stored information, or tangible things). [The notice requirement in Rule 45.01, adopted in 2012, was subsequently deleted from Rule 45.01 and moved to Rule 45.04. See Rule 45.04, Advisory Commission Comment (2013).]

45.04: Tennessee has adopted the Uniform Interstate Depositions and Discovery Act, Tenn. Code Ann. §§ 24-9-201, et seq. The Act aids only the lawyer who wants to take a deposition or obtain discovery in Tennessee for use elsewhere. Tennessee lawyers seeking to take a deposition or obtain discovery in a foreign jurisdiction must look to that jurisdiction's law for similar assistance.

Advisory Commission Comment [2013]

45.01: The amendment deletes language setting out a 14-day time period to file a motion to quash and requiring a notice on the face of the subpoena. That language should not apply to a

trial subpoena. Because Rule 45.01 relates to subpoenas in general and the 14-day time period was intended to address the more limited circumstance when a non-party receives a deposition subpoena, the provisions setting out the timing and placing of the notice were deleted from this rule and moved to Rules 45.04 and 45.07, where they properly belong.

45.04: The amendment requires a notice to be placed on a deposition subpoena issued to a non-party witness with the information that the witness has until twenty-one days after service of the subpoena to serve an objection to the subpoena on the issuing attorney. This change is consistent with the removal of the requirement to file a motion to quash within the earlier of the date of compliance or 14 days from the date of service, as set out in former Rule 45.01.

45.07: Amended Rule 45.07 states the duty of an issuing party or attorney to avoid undue burden on the non-party witness receiving the subpoena. It also eliminates the necessity for a non-party to file a motion to quash or modify a deposition subpoena for testimony or subpoena for production of documentary evidence. The rule adopts the procedure under Fed. R. Civ. P. 45(c)(2)(B), permitting the subpoenaed non-party to serve a written objection on the party or attorney designated in the deposition subpoena. This objection must be served within twenty-one days of service of the subpoena on the non-party. The burden is shifted to the party issuing the subpoena to file a motion to compel. The rule otherwise retains the method of enforcing a subpoena set out in former Tenn. R. Civ. P. 45.07.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 54

JUDGMENTS AND COSTS

[Amend Rule 54.04(2) by adding the underlined text and deleting the overstricken text below:]

54.04. Costs. — (1) Costs included in the bill of costs prepared by the clerk shall be allowed to the prevailing party unless the court otherwise directs, but costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law.

(2) Costs not included in the bill of costs prepared by the clerk are allowable only in the court's discretion. Discretionary costs allowable are: reasonable and necessary court reporter expenses for depositions or trials, reasonable and necessary expert witness fees for depositions (or stipulated reports) and for trials, reasonable and necessary interpreter fees not paid pursuant to Tennessee Supreme Court Rule 42 ~~for depositions or trials~~, and guardian ad litem fees; travel expenses are not allowable discretionary costs. Subject to Rule 41.04, a party requesting discretionary costs shall file and serve a motion within thirty (30) days after entry of judgment. The trial court retains jurisdiction over a motion for discretionary costs even though a party has filed a notice of appeal. The court may tax discretionary costs at the time of voluntary dismissal. In the event an appeal results in the final disposition of the case, under which there is a different prevailing party than the prevailing party under the trial court's judgment, the new prevailing party may request discretionary costs by filing a motion in the trial court, which motion shall be filed and served within

thirty (30) days after filing of the appellate court's mandate in the trial court pursuant to Rule 43(a),
Tenn. R. App. P.

Advisory Commission Comment [2013]

54.04: Tenn. Sup. Ct. R. 42 was amended (effective July 1, 2012) to govern the payment of costs for services of interpreters used in proceedings covered by that rule. Rule 54.04(2) was amended to provide that any “reasonable and necessary interpreter fees not paid pursuant to Tennessee Supreme Court Rule 42” may be allowed as discretionary costs.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 55

DEFAULT

[Add the following new Advisory Commission Comment; the text of the rule is unchanged:]

Advisory Commission Comment [2013]

Tenn. R. Civ. P. 3A (“Enforcement of Foreign Judgments”) was adopted in 2013. With the adoption of Rule 3A, no motion for default or entry of a default judgment is required before the clerk may issue requested execution upon a properly enrolled, undisputed foreign judgment.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 62

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

[Amend Tenn. R. Civ. P. 62.05(2) by adding the underlined text and deleting the overstricken text below:]

62.05. Bond for Stay. — A bond for stay shall have sufficient surety and:

(1) * * * *

(2) if an appeal is from a judgment ordering the assignment, sale, delivery or possession of personal or real property, the bond shall be conditioned to secure obedience of the judgment and payment for the use, occupancy, detention and damage or waste of the property from the time of appeal until delivery of possession of the property and costs on appeal. If the appellant places personal property in the custody of an officer designated by the court, such fact shall be considered by the court in fixing the amount of the bond. A party may proceed as ~~a poor~~ an indigent person without giving any security as provided in Rule 18 of the Tennessee Rules of Appellate Procedure. Upon motion submitted to the trial court and for good cause shown, the bond for stay may be set in an amount less than that called for in the first sentence of this section of this rule. In ruling on such a motion, the trial court may consider all appropriate factors including, but not limited to, the appealing party's financial condition and the amount of the appealing party's insurance coverage, if any. If the motion is granted, the party may obtain a stay by giving such security as the court

deems proper. If leave to obtain a stay required by this rule is denied, the court shall state in writing the reasons for denial.

(3) * * * * .

Advisory Commission Comment [2013]

The rule was amended to replace the term “poor person” with the term “indigent person.” The amendment was not intended to change the meaning or application of the rule.