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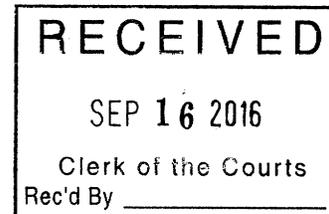
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September 15, 2016

Mr. James Hivner, Clerk  
Re: 2017 Rules Package  
100 Supreme Court Building  
401 7<sup>th</sup> Ave. North  
Nashville, TN 37219-1407



**Re: No. ADM2016-01777 - Tenn. R. Civ. P. 4**

Dear Mr. Hivner:

On behalf of Tennessee Farmers Insurance Companies and affiliates (“TFIC”), I want to express my appreciation for the Advisory Commission’s request for comments on the proposed amendments and to seek your consideration of our comments regarding the practical effect of the Advisory Commission’s proposed changes to Rule 4 of the Tennessee Rules of Civil Procedure on the public and the business community in our great state.

My concern is with the proposed amendment to Rule 4.04(10) that would allow for entry of a default judgment when the record contains “a return receipt stating that the addressee or the addressee’s agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to Rule 4.04(11).” This proposal does not provide any relief in the event an addressee or its agent has a valid reason for refusing to accept delivery of certified mail, which is far too often in my experience.

I serve as the registered agent for TFIC, and the Tennessee Commissioner of the Department of Commerce and Insurance (“TDOI”) serves as the statutory agent for acceptance of service for all insurance companies. Despite this registered agent information being readily available on the Tennessee Secretary of State’s website and the website of the TDOI, my office frequently handles service of process mistakes. Most often, these errors fall into one of three categories in which (a) service is attempted on an entity that does not exist (i.e. the named defendant is not an actual corporation), (b) service on an entity that does exist is attempted to be completed through a person who is not authorized to accept service, or (c) service on an entity is not directed to any person or authorized agent.

At TFIC we have processes in place to handle these situations. Both our legal department and TDOI frequently refuse to accept certified mail that is not addressed to a valid entity. Our office also refuses acceptance of certified mail that is not addressed to a person within the companies. When made aware of the event, we object to service on persons not authorized to accept service on behalf of our organizations. These processes have been put in place to make sure service is made on a corporate entity that actually exists under state law and so that persons who can respond to such service are notified of the action. However, under the proposed rule, it appears that following these processes might be grounds for a default judgment against one of our organizations when service is refused for a valid reason.

In addition, application of this proposed rule could work an unfair hardship on small businesses and nonprofit corporations served with legal process that might not have such processes in place or fully understand the effect of a failure to timely respond, especially in circumstances in which the wrong entity or person is served with a lawsuit. For example, the local non-profit Farm Bureau agriculture organizations in counties across this state are sometimes served with process when it really is meant for one of our insurance companies. If one of those nonprofits refuses service for a valid reason, for example the person served is not the registered agent for the nonprofit, the proposed rule would allow entry of a default judgment against the nonprofit in such action.

As I do not want to complain without offering a solution, I respectfully suggest changes to Rule 4.04 as set forth below. A marked draft is attached.

Revise Rule 4.04(4) as follows:

*Upon a domestic corporation, or a foreign corporation doing business in this state, by delivering a copy of the summons and of the complaint to the registered agent or other agent specifically authorized by appointment or by law to receive service on behalf of the corporation, or if no such agent exists, to an officer or managing agent thereof.*

Revise the proposed change to Rule 4.04(10) as follows:

*Service by mail shall not be the basis for the entry of a judgment by default unless the record contains either: (a) a return receipt showing personal acceptance by the defendant or by persons specifically designated by Rule 4.04 or statute; or (b) a return receipt stating that the addressee or the addressee's agent refused to accept delivery, if the return receipt was properly addressed to the defendant or persons designated by Rule 4.04 or statute, which is deemed to be personal acceptance by the defendant pursuant to Rule 4.04(11).*

Revise Rule 4.04(11) as follows:

*When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee's agent refuses to accept delivery, if the return receipt is properly addressed to the defendant or persons specifically designated by Rule 4.04 or by statute and such refusal is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice.*

Thank you for the opportunity to share my thoughts on this matter with the Committee and your efforts to craft well-considered, fair rules for our civil court system.

Very truly yours,



**Ed Lancaster**  
General Counsel

Proposed Revisions to Tenn. R. Civ. P. 4  
Marked Draft

Revise Rule 4.04(4) as follows:

Upon a domestic corporation, or a foreign corporation doing business in this state, by delivering a copy of the summons and of the complaint to ~~an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent~~ the registered agent or other agent specifically authorized by appointment or by law to receive service on behalf of the corporation, or if no such agent exists, to an officer or managing agent thereof.

Revise Rule 4.04(10) as follows:

Service by mail shall not be the basis for the entry of a judgment by default unless the record contains either (a) a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute; or (b) a return receipt stating that the addressee or the addressee's agent refused to accept delivery, if the return receipt was properly addressed to the defendant or persons designated by Rule 4.04 or statute, which is deemed to be personal acceptance by the defendant pursuant to Rule 4.04(11). If service by mail is unsuccessful, it may be tried again or other methods authorized by these rules or by statute may be used.

Revise Rule 4.04(11) as follows:

When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee's agent refuses to accept delivery, if the return receipt is properly addressed to the defendant or persons designated by Rule 4.04 or by statute and ~~if~~ such refusal is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing.