

**LOCAL RULES OF PRACTICE  
EFFECTIVE AUGUST 14, 2019**

---

**FOR THE  
CRIMINAL COURT  
OF THE THIRTEENTH JUDICIAL DISTRICT  
CLAY COUNTY, CUMBERLAND COUNTY, DEKALB COUNTY,  
OVERTON COUNTY, PICKETT COUNTY, PUTNAM COUNTY,  
WHITE COUNTY OF TENNESSEE**

**IT IS HEREBY ORDERED that all local rules of practice and procedure now on the minutes of the Criminal Courts of the Thirteenth Judicial District including Clay, Cumberland, DeKalb, Overton, Pickett, Putnam and White Counties of Tennessee be stricken and in lieu thereof the following rules will be observed in the conduct of business of said Criminal Courts, the same to spread upon the minutes of each county of the Thirteenth Judicial District.**

**JUDGE GARY S. MCKENZIE.  
CRIMINAL COURT, PART I  
SUITE 303  
321 EAST SPRING STREET  
COOKEVILLE, TN 38501**

**JUDGE WESLEY THOMAS BRAY  
CRIMINAL COURT, DIVISION II  
SUITE 305  
321 EAST SPRING STREET  
COOKEVILLE, TN 38501**

## TABLE OF RULES

### Rule

1. **Applicability, Suspension and Definitions**
2. **Case Assignment Distribution**
3. **Court Sessions**
4. **Appearance and Conduct of Counsel**
5. **Court Files**
6. **Filing and Service of Papers**
7. **Discovery**
8. **Trial Dockets and Nonjury Dockets**
9. **Use of Audio/Visual Recordings**
10. **Motions**
11. **Negotiations and Settlements**
12. **Setting Cases for Trial and Continuances**
13. **Subpoenas**
14. **Exhibits**
15. **Requests for Special Instructions**
16. **Orders and Judgments**

## RULE 1

### APPLICABILITY, SUSPENSION AND DEFINITIONS

#### 1.01 Former Rules Abrogated

All former rules of local practice of the Criminal Court except as readopted herein are abrogated.

#### 1.02 Applicability

Each rule is applicable in the Criminal Court regardless of which Division is hearing the case.

#### 1.03 Suspension of Rules

Whenever the Court determines that justice requires it, any of these rules may be suspended unless the suspension would violate a Tennessee Rule of Criminal Procedure.

#### 1.04 Definitions

The following definitions and abbreviations apply to terms used in these rules:

- (1) Clerk: The Circuit Court Clerk or the respective designee.
- (2) Tn.R.Crim.P.: Tennessee Rules of Criminal Procedure.
- (3) L.R.P.: Local Rules of Practice

## **RULE 2**

### **CASE ASSIGNMENT DISTRIBUTION**

#### **2.01 Interchange of Judges**

Whenever necessary for the efficient administration of justice, a judge within this district or another judicial district may hear and determine any matter by interchange without the necessity of transferring the case from one Court to another and without the necessity of an Order of Interchange.

## **RULE 3**

### **COURT SESSIONS**

#### **3.01 Time**

Regular sessions of Court will open at 9:00 AM or at such other time as the Court may direct. Attorneys and defendants shall be prompt at all sessions. On all court dates, defendants shall be in the courtroom at 8:30 AM. On the days designated for negotiation deadline, the attorneys for both the defendant and the State shall be in the courtroom at 8:30 AM.

#### **3.02 Children in Court**

Small children shall not be brought into the courtroom except when it is unavoidable, (i.e., witness/party).

#### **3.03 Beepers and Phones**

All persons shall disable any ringing or beeping device while inside the courtroom. Counsel shall apprise clients and witnesses of this rule.

### **3.04 Legal Holidays**

Certain holidays have been designated by the State of Tennessee as legal holidays. Court will not be conducted on the following days:

- (a) New Year's Day
- (b) Martin Luther King, Jr. Day
- (c) President's Day
- (d) Good Friday
- (e) Memorial Day
- (f) Independence Day
- (g) Labor Day
- (h) Columbus Day, unless this date is exchanged with the Friday after

Thanksgiving.

- (i) Veterans Day
- (j) Thanksgiving Day
- (k) Christmas Day

## **RULE 4**

### **APPEARANCE AND CONDUCT OF COUNSEL**

#### **14.01 Counsel of Record; Entry of Appearance**

(a) All counsel who have entered an appearance in a case will be counsel of record. Entry of an appearance shall be made in one of the following ways:

- (1) the filing of pleadings;
- (2) the filing of a formal notice of appearance; or
- (3) appearance of counsel at an arraignment.

A qualified appearance may be made by counsel at the arraignment only if approved by the Court.

(b) Whenever a person in a criminal case is determined by the Court to be indigent and counsel is appointed, an order shall be entered setting forth the indigency finding and identifying the appointed counsel.

(c) Counsel appointed in General Sessions Court is required to continue representation throughout the Criminal Court proceedings, unless allowed to withdraw pursuant to L.R.P. 4.02.

#### **4.02 Withdrawal of Counsel**

(a) No attorney will be allowed to withdraw except for good cause and by leave of Court upon motion and hearing after notice to the party, or by agreed order signed by the attorney and client and approved by the Court.

(b) Appointed counsel shall continue to represent the defendant until relieved by order of the Court. Counsel shall represent the defendant subsequent to final judgment in such matters that deal with any correction of the judgment and through the initial

appellate review. Such appointment, however, shall not extend to post conviction relief petitions, parole matters or matters unrelated to the case or cases upon which the appointment was originally made. When appointed counsel represents a defendant in matters subsequent to final judgment, the Court may enter an order reappointing counsel so as to authorize the attorney to seek compensation pursuant to T.C.A. 40-14-201 et seq.

#### 4.03 Conduct of Counsel

(a) During trial, counsel shall not exhibit familiarity with witnesses, jurors or opposing counsel. The use of first names for adults shall be avoided. During opening statement or argument, no juror shall be addressed individually by name.

(b) Bench conferences should be requested by counsel only when absolutely necessary in aid of a trial. Counsel may not lean upon the bench nor appear to engage the Court in conversation in a confidential manner.

(c) Counsel should refrain from interrupting the Court or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect the client. Counsel should respectfully await the completion of the Court's statement or opinion without interruption. When objection is made to a question asked, counsel should refrain from asking the witness another until the Court has had an opportunity to rule upon the objection. Objecting counsel shall state the legal grounds without argument or discussion, except by leave of Court.

(d) Attorneys shall stand while examining witnesses or addressing the jury or the Court, unless excused by the Court.

**(e) Attorneys shall not converse with a juror about any matter of fact or law that may pertain to a case during the juror's period of service, except in open court, or by express permission of the Court.**

**(f) The ethical standards relating to the practice and administration of law in this Court are set forth by Rule 8 of the Rules of the Tennessee Supreme Court, cited as: "Code of Professional Conduct."**

**(g) The following Standards of Intra-Professional Conduct are hereby adopted as standards which govern the conduct of counsel:**

#### **Standards of Intra-Professional Conduct**

**1. A lawyer should avoid taking action adverse to the interests of a litigant known to be represented without notice to adversary counsel sufficient to permit response.**

**2. A lawyer should respond promptly to any communication, or attempted communication from other lawyers, whether by telephone or written correspondence.**

**3. A lawyer should avoid making ill-considered accusations of unethical conduct toward an opponent.**

**4. A lawyer should not engage in intentional, discourteous behavior for the purpose of obtaining an advantage.**

**5. A lawyer should never intentionally embarrass another attorney and should avoid personal criticism in the presence of the attorney's client or other counsel.**

**6. A lawyer should not seek sanctions against or disqualification of another attorney unless necessary for the protection of a client and fully justified by the circumstances, and never for the mere purpose of obtaining a tactical advantage.**



7. A lawyer should strive to maintain a courteous tone in correspondence, pleadings and other written communications.

8. A lawyer should never intentionally mislead or deceive an adversary and should honor promises and commitments.

9. A lawyer should acknowledge that legal conflicts are professional and not personal, and should endeavor to maintain a friendly and collegial relationship with adversaries. In short, a lawyer should "leave the argument at the courtroom door."

#### 4.04 Contacting Judge

Neither counsel nor a party to a pending action shall contact the Judge before whom a controverted matter is pending unless there is an emergency, except:

- (a) with opposing counsel present;
- (b) with permission of opposing counsel
- (c) to determine trial status;
- (d) by conference telephone call with all parties and/or counsel;
- (e) by letter, a copy of which is sent to all counsel of record and the Clerk; or
- (f) by filing appropriate ex parte motions.

#### 4.05 Proper Attire

Counsel, litigants, witnesses, court reporters, and court officers shall not dress in a manner which distracts from the proper decorum in the Court.

**RULE 5**  
**COURT FILES**

**5.01 Custody and Keeping**

All case files and/or evidence shall be under the custody and control of the Clerk and shall not be withdrawn by anyone at anytime except as set forth in 5.02 L.R.P.

**5.02 Permission for Withdrawal**

Attorneys seeking to withdraw a file shall obtain written permission of the Court and furnish the Clerk with a receipt thereof. Any files withdrawn accordingly shall not be retained for more than five (5) days without a written extension by the Court. The person withdrawing the file shall be responsible for maintaining its contents and returning it to the Clerk. Copies of files shall be furnished by the Clerk at a reasonable cost.

**RULE 6**  
**FILING AND SERVICE OF PAPERS**

**6.01 Filing with the Clerk**

(a) All papers, including pleadings, motions, judgments and orders shall be filed with or submitted to the Clerk.

(b) See also Rule 12.1, Rule 12.2, and Rule 12.3 Tn.R.Crim.P.

**6.02 Certificate of Service**

All motions and orders must contain a certificate of service which shall include the date of service and the name of the person or persons served.

### 6.03 Signature of Counsel

All pleadings, orders, briefs and other papers submitted for consideration by the Court shall show the style and number of the case, the general nature of the paper filed and the name, address, telephone number and the Tennessee Supreme Court Registration Number of the attorney filing the pleading.

### 6.04 Filings

All motions and orders filed with the Clerk must be original hard copies. Facsimiles will not be accepted for filing.

## RULE 7

### DISCOVERY

#### 7.01 Discovery by the Defendant

(a) Requests for discovery and inspection made by the defendant pursuant to Rule 16(a) Tn.R.Crim.P. shall be in writing and should be made within fourteen (14) days of arraignment.

(b) The State shall answer the defendant's request within fourteen (14) days of receipt of the defendant's request.

(c) If the State is proceeding under an "open file" policy, upon request, the defendant shall be allowed to copy the State's file. The defendant may refuse "open file" discovery and require the State to provide a written response pursuant to Rule 16 Tn.R.Crim.P.

(d) The State and the defendant shall have a continuing duty to disclose additional evidence and material pursuant to Rule 16(c) Tn.R.Crim.P.

## **7.02 Discovery by the State**

Requests for discovery and inspection made by the State pursuant to Rule 16(b) Tn.R.Crim.P. shall be in writing and shall be made within fourteen (14) days of the receipt of the defendant's request for discovery and inspection.

## **7.03 Motions to Compel Discovery**

(a) An attempt shall be made to resolve any and all discovery disputes prior to litigating the same.

(b) Motions to compel discovery pursuant to Rule 16(d)(2) Tn.R.Crim.P. shall be filed within twenty (20) days of non-compliance.

(c) Motions to compel discovery must recite the request made, or be accompanied by a copy of the filed discovery request and must certify non-compliance with these rules.

## **7.04 Alibi**

(a) Requests for disclosure of alibi pursuant to Rule 12.1 Tn.R.Crim.P. shall be made within fourteen (14) days of receipt of the defendant's request for discovery or inspection and, in the event the defendant makes no discovery request, within thirty (30) days of arraignment.

(b) The timing and procedure for the defendant's answer and the State's further notice shall be made in accordance with Rule 12.1 Tn.R.Crim.P.

## RULE 8

### TRIAL DOCKETS AND NONJURY DOCKETS

#### 8.01 Daily Dockets

The Clerk shall prepare daily dockets for trials and nonjury days.

#### 8.02 Cases Not Reached

In the event a case is not reached on the day it is set for trial, it may, in the discretion of the Court, be carried over to the following trial day or may be reset for trial at a later date. All cases shall be treated as primary settings.

## RULE 9

### USE OF AUDIO/VISUAL RECORDINGS

Pursuant to Rule 16 Tn.R.Crim.P., a party intending to offer an audio and/or visual recording as evidence in any jury trial, shall provide written notice to all adverse counsel at least fourteen (14) days prior to trial. Adverse counsel shall be permitted to review the recording in the form in which it is intended to be offered at trial. Adverse counsel shall promptly advise the opposing attorney of each objection to the recording. The attorneys shall then attempt in good faith to resolve such matters. If the attorneys cannot resolve the objections, they shall advise the trial court within sufficient time for rulings and editing of the recording prior to trial. This rule does not apply to rebuttal or impeachment evidence and does not abrogate the requirements of Rule 12 Tn.R.Crim.P.

## RULE 10

### MOTIONS

#### 10.01 Time for filing Pretrial Motions

(a) All pretrial motions made pursuant to Rule 12(b) and Rule 21 Tn.R.Crim.P. shall be filed and served within fourteen (14) days of receipt of the State's answer to defendant's request for discovery. If no request for discovery is made by the defendant, motions under this rule must be filed within thirty (30) days of arraignment.

(b) Application for pretrial diversion pursuant T.C.A. 40-15-102 et seq. shall be filed within thirty (30) days of the arraignment.

#### 10.02 Time for Hearings on Motions

Pretrial motions will be heard on a date set by the Court. Such hearings may be set on the negotiation deadline day or at such other time as the Court may direct.

#### 10.03 Failure to Appear at a Motion Hearing

If counsel for a movant does not appear as scheduled for the motion, the Court may strike, overrule, deny or otherwise dispose of the motion.

#### 10.04 Motions Relating to Discovery

Motions relating to discovery will be disposed of in accordance with Rule 7 L.R.P.

## RULE 11

### NEGOTIATIONS AND SETTLEMENTS

#### 11.01 Offers of Settlement

The District Attorney has no obligation to make any offer of settlement. Either party may make an offer of settlement at any time prior to the negotiation deadline. Should the District Attorney desire to make an offer of settlement, the offer shall be

made in writing no later than ten (10) days prior to the negotiation deadline. Defense counsel shall deliver a written response to the offer no later than forty eight (48) hours prior to the negotiation deadline. This rule shall not be construed to discourage oral offers of settlement by either party in an attempt to resolve the case.

#### **11.02 Settlement Date; Negotiation Deadline**

At arraignment, the Court will assign a court date for settlement of the case, which will be the negotiation deadline for acceptance of a negotiated disposition. At the negotiation deadline, if the case has not been settled, the Court may set the case for trial. Upon the docketing of the case for trial, no negotiated disposition will be accepted by the Court, unless the case constitutes a Class A, B, or greater felony. The case may be resolved only by trial, dismissal with prejudice, State's motion for a nolle prosequi, or the defendant's plea of guilty to the offense(s) charged in the indictment. Nothing in this rule shall prohibit the defendant's election to enter a plea of guilty to one or more counts of the same indictment. Likewise, counsel for the State may move to dismiss with prejudice one or more counts of the indictment while demanding trial on one or more counts.

#### **11.03 Discussion Day**

At arraignment, the Court may assign a discussion day. Discussion day is designated as a time for defense counsel and representatives of the District Attorney General's Office to discuss a just resolution of pending cases. Appearance of counsel and defendant may be excused upon permission of the Court when a written plea form has been signed by the defendant and/or his attorney and the State's attorney. In the event an agreement is reached, the resolution will be accepted at the next scheduled

settlement date pursuant to Rule 11.02 L.R.P. Counsel shall have the necessary paperwork prepared prior to the settlement date.

#### **11.04 Pretrial Order**

All pretrial motions are to be filed within the times set forth in these rules; however, the Court may in some cases enter individual pretrial orders setting forth specific time frames for motions and responses.

#### **11.05 Notice to Victims**

In cases involving plea agreements pursuant to Rule 11 Tn.R.Crim.P., the Court may refuse to accept the plea agreement when the prosecuting attorney is unable to state on the record that there has been communication with the victim, or that a good faith effort has been made to communicate with the victim.

## **RULE 12**

### **SETTING CASES FOR TRIAL AND CONTINUANCES**

#### **12.01 Method of Setting**

Cases will be set for trial in accordance with Rule 11 L.R.P.

#### **12.02 Continuances**

(a) Cases may not be continued by agreement without leave of Court. After a case has been set for trial it will not be continued, except for good cause which shall be brought to the attention of the Court as soon as practical prior to the date of the trial.

(b) Absence of a witness will not be considered by the Court as a ground for a continuance, unless the witness has been subpoenaed in accordance with the requirements of these rules and Tn.R.Crim.P.



(c) When a case is continued, a new docket date will be assigned at the time of continuance.

(d) When a case is continued over a victim's objection, the Court shall state on the record the reason for continuance and the procedures to avoid further delay pursuant to T.C.A. 40-38-116.

## **RULE 13**

### **SUBPOENAS**

#### **13.01 Issuance of Subpoenas**

(a) All subpoenas for witnesses, except subpoenas issued in "blank," shall be issued and signed by the Clerk in triplicate. One copy shall be designated "service copy" and it is to be left with the witness. One copy shall be designated "file copy" and retained in the file. The original shall be the "return copy."

(b) Subpoenas issued in "blank" shall be signed by the Clerk, shall be completed by the party requesting it, and three copies shall be filed with the Clerk within the time frame set forth in Rule 13.03(a),(b) L.R.P.

#### **13.02 Clerk's Duty Upon Issuing of Subpoena; Removal of File Copies**

When a subpoena is issued, the Clerk shall:

(a) place the file copy of the subpoena in the file of the case; and

(b) deliver the service copy and original to the sheriff or other authorized person for service; and

(c) when the original subpoena is returned to the Clerk, the Clerk shall file the original and remove the file copy and discard it.

### 13.03 Time for issuing Subpoenas

(a) Non-Jury Cases: A subpoena for a local witness must be issued and dated by the Clerk no later than five (5) days before the date of trial. If the witness is located outside of the county, the subpoena must be issued by the Clerk and mailed or otherwise transmitted to the out-of-county sheriff or other authorized person no later than seven (7) days before the date on which the case is set for trial.

(b) Jury Cases: Subpoenas must be issued and dated by the Clerk no later than seven (7) days prior to trial for local witnesses and ten (10) days for out-of-county witnesses. Subpoenas for expert and professional witnesses must be issued within five (5) days of the setting of the case for trial.

### 13.04 Responsibility of Counsel

Counsel of record shall be responsible for ensuring the subpoenas are issued in accordance with this rule and the applicable rules of Criminal Procedure. Nothing in this rule prohibits counsel from preparing subpoenas. The Clerk may not refuse to issue subpoenas requested by counsel at any time.

## RULE 14

### EXHIBITS

The Clerk shall account for and be the custodian of all trial exhibits, unless otherwise directed by the Court.

RULE 15

REQUESTS FOR SPECIAL INSTRUCTIONS

Special requests for jury instructions pursuant to Rule 30, Tn.R.Crim.P. shall be filed with the Clerk and copied to adversary counsel. When a request for a verbatim Tennessee Pattern Jury Instruction is made, the request shall be made by reference to "TPI (Crim.) No. \_\_\_\_\_." A request for a modification of an existing instruction shall identify the instruction to be modified by number, and shall identify the deletion or addition. When a request for an instruction is made for which there is no Tennessee Pattern Jury Instruction, this fact must be stated in the request. All requests seeking to alter or modify a Tennessee Pattern Jury Instruction, or proposing an original jury instruction, shall be accompanied by the legal authority for such request.

RULE 16

ORDERS AND JUDGMENTS


16.01 Preparation and Submission of Orders and Judgment

(a) Unless the Court directs otherwise, all orders and judgments will be prepared by the District Attorney General with a copy certified to defense counsel.

(b) All orders must be sent to the Judge and served on opposing counsel within ten (10) days following the day on which the ruling is made by the Court.

Entered this 14th day of August, 2019.

  
\_\_\_\_\_  
JUDGE GARY S. MCKENZIE  
CRIMINAL COURT  
PART I

  
\_\_\_\_\_  
JUDGE WESLEY THOMAS BRAY  
CRIMINAL COURT  
DIVISION II