

# RULES OF THE CRIMINAL COURT FOR THE EIGHTH JUDICIAL DISTRICT

## Rule 1. Scope of Rules.

### 1.01. Adoption of Rules.

These local rules replace all previous local rules and shall become effective March 1, 2023.

### 1.02. Application of Rules.

These rules govern practice in the Criminal Court of the Eighth Judicial District and apply to all persons and entities who appear before the court, regardless of capacity (i.e. attorneys, parties, witnesses, etc.). The Tennessee Rules of Criminal Procedure shall control in the event of any conflict between them and the Local Rules.

These rules shall be construed to secure a just and speedy determination of all matters.

### 1.03 Title and Citation

These rules shall be known as the Local Rules of the Criminal Court for the Eighth Judicial District. They may be cited as "Cr.L.R. \_\_\_."

### 1.04. Suspension of Rules.

A judge may suspend any of these rules whenever justice requires.

## Rule 2. Representation.

### 2.01. Appearance.

An attorney who has entered an appearance in a case will be counsel of record. Entry of appearance is made in one of the following ways:

- (a) appearance of counsel at an arraignment;
- (b) appointment by the court;
- (c) the filing of a written notice of appearance; or
- (d) the filing of any pleading.

The filing of a notice of appearance or pleading shall include a current address, telephone number, email address, and Board of Professional Responsibility number. An

appointment to an indigent Defendant shall also be an appearance.

### 2.02. Withdrawal.

(a) *No Withdrawal Without Leave of Court.* No attorney shall be allowed to withdraw except with leave of the court upon written motion after written notice to the client and the Office of the District Attorney General. The motion shall specify the reason for the withdrawal. Unless the motion is signed by both the attorney and the client or a consent to the withdrawal is signed by the client and attached to the motion, a copy of the motion must be provided to the client at least five (5) business days prior to the date the motion is filed. Further, counsel serve the client at least five (5) business days before the hearing with the notice of the date, time, and place of the hearing. The client shall appear on that date. Counsel must certify to the court that these requirements have been met.

If the client has failed to appear on two consecutive court dates, counsel may move to withdraw if reasonable efforts to contact the client have been unsuccessful.

Withdrawal of counsel shall be made so as not to delay trial and will generally not be permitted once a trial date has been set absent exceptional grounds.

(b) *Withdrawal after Conditional Appearance.* Failure of a client to comply with payment agreements in and of itself is generally not acceptable grounds for withdrawal. However, counsel may make a conditional appearance at arraignment for a period not greater than thirty (30) days. Counsel must file a notice of conditional appearance in writing before or contemporaneously with arraignment. Counsel must then file a notice of withdrawal in writing within thirty (30) days of arraignment. The notice shall direct the clerk to docket the matter on the next administrative docket, and the Defendant shall be required to appear. The notice shall include a certificate of service to the Defendant. Failure to file such timely notice

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results in an appearance. An attorney may also appear for the limited purpose of filing and presenting a motion for the setting or reduction of bond.

### **Rule 3. Calendar, Docketing, and Scheduling Procedures.**

#### **3.01. Calendar.**

The Criminal Court shall release its calendar on or about July 1 for the following year. The calendar will be balanced by caseload throughout the five counties of the district. Generally, Criminal Court will be held in Campbell County every 3-4 weeks and in Claiborne, Fentress, Scott, and Union Counties every 5-7 weeks. Two Fridays per month shall be reserved for Recovery Court.

The first day of the week shall be reserved for all administrative and non-jury matters (except for bench trials). The remainder of the week shall be reserved for trials or, with permission from the court, special settings for evidentiary hearings in the county where court is held that week. Absent extraordinary circumstances as determined by the court, the court will not hear any matter in a different county than what is scheduled that week due to the limited availability of courtrooms.

Administrative days and trials shall begin at 9:00 am unless otherwise specified by the court. Attorneys shall be prompt and must notify chambers if requesting permission to be late or absent.

#### **3.02. Jury Orientation.**

Grand juries and panels of petit juries will be empaneled in each county of the district twice per year. Jury orientation and Grand Jury selection will be held on Fridays at 1:00 pm on weeks in each county as designated on the Court Calendar.

#### **3.03. Arraignment and Initial Scheduling.**

(a) *Notification.* Each Defendant who has a case bound over to the Grand Jury or appeals

to the Criminal Court from the General Sessions court shall appear in court at a time and date fixed by a schedule set by the Criminal Court Judge. Each Defendant shall be advised of that date by the General Sessions Court Judge.

Any defendant who is arrested by *capias* shall be advised by the Sheriff or Clerk of the next administrative day after arrest and direct the Defendant to appear on that date at the taking of the bail bond.

(b) *Arraignment.* After an indictment has been returned, the court will hold an arraignment at the next available administrative day in that county—or at the next administrative day after a sealed indictment has been served. Every Defendant shall appear personally at arraignment unless the Defendant has filed a written waiver of appearance pursuant to Tenn. R. Cr. P. 43(d)(4) in which case Defendant may appear through counsel.

(c) *Initial Scheduling Order.* At arraignment, the Defendant will be provided a scheduling order which shall set forth deadlines for discovery and motion filings, as well as a date for motions to be heard. This deadline applies to all motions filed pursuant to Tenn. R. Crim. P. 12(b). The Defendant and counsel shall be required to appear at the motion date, even if no motions have been filed. If no motions have been filed, the court will either set the matter for trial at the request of either party or impose a plea deadline. After motions have been disposed, the court will either set the matter for trial at the request of either party, or impose a plea deadline. The Defendant and counsel will be required to appear on the date of the plea deadline. If no plea agreement has been reached by the plea deadline, the court will set the matter for trial. If an agreement is reached, a notice of disposition must be filed five (5) business days prior to the plea deadline.

(d) *Extensions of Time.* The parties may agree to extend the deadlines for discovery or motion filings without leave of the court so long as all motions are filed by the docket deadline

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prior to hearing and no responsive pleading is filed later than noon on the business day prior to hearing. If parties are unable to agree, a written motion to extend time shall be filed. A written response to a motion to extend time shall be filed within three (3) business days. The court will either rule on the pleadings or else the motion to continue will be heard on the next administrative day after filing.

(e) *Continuances.* The parties may not agree to continue a motion hearing or plea deadline without leave of the court. Any continuance must be granted only upon written motion filed by the docket deadline prior to the motion hearing date or plea deadline. Failure to file for discovery shall not be a basis for the granting of a continuance.

### **3.04. Docket Deadline.**

The deadline to place any matter on the docket for an administrative day is on the Thursday preceding the administrative day.

### **3.05. Plea Paperwork Deadline.**

Plea agreements, rights waivers, and judgment orders signed by both parties shall be filed by the docket deadline. The Clerk shall place the plea on the next administrative day unless otherwise directed by notice.

In unusual circumstances where the plea paperwork cannot be completed by the docket deadline, the parties may file a notice of disposition signed by counsel for both parties by the docket deadline. The notice shall include the date that the plea will be entered. In any event, the plea paperwork should be submitted to the clerk prior to the beginning of court.

### **3.06. Pre-Trial Settlement Conference.**

If both parties agree, the court will entertain a request for permission for a pretrial settlement conference. The timing for such request shall occur either in open court or in writing at any time prior to the plea deadline. Unless otherwise directed by the Criminal Court Judge or Presiding Judge, the Circuit Court Judge

will conduct the pretrial settlement conference. After receiving permission from the Criminal Court Judge, the parties shall contact the Circuit Court Judge's assistant to schedule such a conference. Delay, for any reason, in scheduling of the pretrial settlement conference may result in the revocation of permission to participate in the conference, and a final plea deadline or trial will be scheduled.

Pretrial settlement conferences shall be conducted off the record. Any statements or discussions made during a pretrial settlement conference are inadmissible pursuant to Tenn. R. Evid. 408 and 410.

If a settlement is reached, the parties shall file a notice of disposition within three (3) business days after the conclusion of the pretrial settlement conference. If a settlement is not reached, the next available administrative day will serve as the final plea deadline.

## **Rule 4. Motions and Discovery.**

### **4.01. Timing of Motions.**

Motions that a party wishes to be heard on an administrative day other than the hearing date specified in the scheduling order must be filed with a notice of hearing instructing the clerk to place the matter on the docket. The notice of hearing must be served on opposing counsel.

Further, any motion must be filed at least five (5) business days prior to the hearing date. Responses must be filed the earlier of: five (5) business days or by noon on Friday before the motion hearing.

If a motion is filed before the docket deadline but not in compliance with this rule, the court will only hear the motion on the administrative day with agreement from the parties unless an emergency circumstance exists. Otherwise, the court will call the motion at the administrative day to set a briefing schedule and hearing date.

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### 4.02. Motions Requiring Proof.

Motions requiring proof and witness testimony must contain the wording, "Motion will require proof," in the heading.

While a motion hearing date will be provided in the scheduling order, parties should contact chambers to set a motion on a special setting for evidentiary hearings that will last longer than thirty minutes. The parties should contact chambers at least five (5) business days prior to the hearing date, or as soon as practicable.

### 4.03. Certificate of Service.

All pleadings shall contain a certificate of service showing the date and manner of service and the name of the person(s) served.

### 4.04. Bond Motions.

Any motion by a party to set, reduce, increase, or revoke bond must be made in writing in accord with the deadlines contained in Cr.L.R. 4.01. Oral motions will only be entertained if the parties agree to hear the motion in the absence of written pleadings.

### 4.05. Discovery Requests.

Discovery requests shall be filed and served upon the Office of the District Attorney General, and the District Attorney must respond to discovery requests in the time period contained in the Scheduling Order, unless otherwise agreed by the parties consistent with these rules.

Any requests for discovery by the State pursuant to Tenn. R. Crim. P. 16(b) and request for notice of alibi, insanity, entrapment, and affirmative defenses shall be made and the Defendant shall respond to such requests in the time period contained in the Scheduling Order. In the event that the Defendant makes no request for discovery, the State shall request notice of alibi, insanity, entrapment, and affirmative defenses within thirty (30) days of arraignment.

### 4.06. Motions to Compel Discovery.

Prior to filing a motion to compel, counsel must send a letter or email to opposing counsel detailing the alleged discovery deficiency, and the parties must meet and confer in order to make a good faith effort to resolve each discovery dispute.

### 4.07. *Ex Parte* Motion for Investigative or Expert Services.

(a) *Sealed Motion.* Counsel may file motions requesting funding for investigative or expert services pursuant to Tenn. Sup. Ct. R. 13 under seal without leave of the court.

(b) *Requirements.* Any motion seeking investigative or expert services must include all requirements contained in Tenn. Sup. Ct. R. 13, Sec. 5, and must include a copy of the investigator's or expert's *curriculum vitae*. Any motion seeking investigative services must also include an itemized budget detailing anticipated time and expenses.

### 4.08. Motions for Mental Evaluation.

If counsel discovers a reasonable basis to believe his or her client was incompetent at the time of the offense or is incompetent to assist in his or her defense, this fact should be made known immediately to the court by written motion seeking a mental evaluation and accompanied by proof in the form of an affidavit or proof at hearing. A motion for mental evaluation shall be filed no later than thirty (30) days following arraignment. In order to entertain a motion for mental evaluation after this deadline, good cause must be shown as to why the court should entertain the motion and the reasons for the delay of counsel in presenting this motion.

### 4.09. Motions *in Limine*.

Unless otherwise ordered, motions *in limine* shall be filed at least eight (8) business days before trial. Written responses, if any, should be filed within four (4) business days.

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Motions *in Limine* will be heard on the administrative day prior to trial.

### 4.10. Sealing of Court Records.

Except as otherwise provided by statute, rule (including Cr.L.R. 4.03), or order, all pleadings and other papers of any nature filed with the court shall become part of the public record of the court.

Court records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the court specifying those court records or portions thereof which shall be placed under seal. Documents that are the subject of a motion to seal may be temporarily filed under seal pending a ruling on the motion to seal.

### Rule 5. Orders

#### 5.01. Preparation of Orders.

The party preparing an order shall include "Prepared by:" and sign their name. The order shall also include either a signature space for all other parties or a certification that all other parties were served with the order.

#### 5.02. Objection to Proposed Orders.

If the parties do not agree as to the contents an Order or Judgment, the matter should be set on the docket at the next available administrative day.

#### 5.03. Procedure for Obtaining Judge's Signature.

All orders shall be mailed directly to the judge for signature. The order should be accompanied by an envelope properly addressed to the clerk of the county in which the action is filed or to the attorney submitting the order with sufficient postage affixed thereto to carry it to its destination.

Alternatively, orders may be lodged with the Clerk for the judge's signature. Orders

shall not be filed by the Clerk, however, until signed by the judge.

### Rule 6. Trials

#### 6.01. No Plea Agreements after Trial Setting.

Once either party requests and receives a trial date, the parties may not enter into a negotiated disposition except for extraordinary circumstances which shall be brought to the attention of the court as soon as practicable before the date of the trial. After a case is set for trial, the matter shall only be resolved by trial, by an open plea, or dismissal with prejudice.

Nothing in this rule shall prohibit the Defendant's election to enter a plea of guilty to one or more counts of an indictment while demanding a trial on one or more counts of the same indictment. Likewise, the State may move to dismiss with prejudice one or more counts of the indictment while demanding trial on one or more counts of the same indictment.

#### 6.02. Continuances.

Cases shall not be continued upon stipulation of counsel. Once a matter is set for trial, a continuance will be granted only upon written motion demonstrating extraordinary grounds. The written motion must be accompanied by an affidavit of counsel and be filed as soon as practicable before the date of the trial. Absence of a witness will not be grounds for continuance unless the witness has been subpoenaed at least five (5) business days prior to trial, except in extraordinary circumstances.

#### 6.03. Order of Trials.

The court endeavors to make every effort to avoid setting multiple cases for trial on the same day. However, in the event that multiple cases are set for trial on the same day, the parties should be prepared for trial on the date it is scheduled. The court will set the order of trials in advance based on Tenn. R. Crim. P. 50 and other legal and practical considerations. Generally, trials where the Defendant is being incarcerated will be given first priority, felony

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trials will be given priority over misdemeanor trials, and older cases will be given priority over newer cases.

### **6.04. Stipulations.**

Stipulations must bear the original signatures of counsel for both parties and the Defendant.

### **6.05. Technology at Trial.**

If counsel intends to use courtroom technology at trial, counsel should make arrangements with the clerk to test the compatibility of technology prior to jury selection. Technology problems will generally not be a reason to delay trial.

If counsel projects images or otherwise utilizes a visual display during opening statements or closing argument, counsel shall remove the visual display during opposing counsel's statements or arguments.

### **6.06. Communication with Jurors.**

While the jury term is in progress, an attorney, or any other party or witness, shall not communicate with or cause another person to communicate with any juror regarding a pending case. After the term of jury term is concluded and the jury is discharged, an attorney may talk to any juror if such juror desires to engage in such conversation, but shall not harass or embarrass the juror or influence future jury service.

## **Rule 7. Plea and Sentencing.**

### **7.01. Entry of Plea.**

Pleas will be conducted in groups of 5-10 defendants at a time. However, either party may request that the court conduct an individual plea on any case, and the court will grant the request.

### **7.02. Notice of Enhanced Punishment.**

The notice required by Tenn. Code Ann. § 40-35-202(a) shall include the class designation of any alleged enhancing felony as contained in Tenn. Code Ann. § 40-35-118 and the enhanced

range demanded by the State. The notice shall be filed eight (8) business days prior to trial or, if a guilty plea is entered, eight (8) business days prior to sentencing.

### **7.03. Enhancement and Mitigation Factors.**

The District Attorney General shall file a statement setting forth any enhancement or mitigating factors the District Attorney General believes should be considered by the court in every case eight (8) business days before the sentencing hearing.

The Defendant shall file a statement with the court setting forth all mitigating factors known to the Defendant and any mitigating factors the Defendant believes should be considered by the court eight (8) business days before the sentencing hearing.

## **Rule 8. Conduct.**

### **8.01. Electronic Devices.**

No one other than court personnel, attorneys, and attorneys' staff may have electronic communication devices including, but not limited to, cell phones, tablets, and laptops in the courtroom. Individuals authorized to have electronic devices should ensure that the devices are silenced. Cameras and recording devices are prohibited, and electronic devices may not be used for photography or audio/video recording except as permitted in Tenn. Code Ann. § 20-9-104 and Tenn. Sup. Ct. R. 30. The use of electronic communication devices should not disrupt any court proceedings.

Any seated petit juror may bring electronic devices into the courthouse during his or her service after *voir dire*. Jurors may only use electronic devices for non-court purposes during breaks. Jurors' devices should be turned off or silenced and stored in the jury room when not in use. Jurors' electronic devices are not allowed in the courtroom.

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### **8.02. Food, Drink, and Tobacco Products are Prohibited.**

Counsel and witnesses may have water at counsel table and the witness stand. No other food or beverage is permitted in the courtroom. No food or chewing gum is permitted in the courtroom.

No tobacco products including cigarettes, chewing tobacco or other forms of smokeless tobacco, or vape pens are permitted in the courtroom.

### **8.03. Addressing the Court.**

No one from outside the space within the bar is permitted to address the court.

### **8.04. Contacting Judge.**

Except as permitted in *ex parte* proceedings, it is the preference of the court for communications outside of court to be made in writing and including opposing counsel in correspondence. This includes communication to both the judge and the judicial assistant.

### **Rule 9. Inclement Weather.**

The Criminal Court will determine the closure or delay of court independent of any other agency, including county governments. The court will make diligent efforts to announce any closure or delay through local media outlets.

### **Rule 10. Media Access.**

Generally, all proceedings are open to the public, including members of the media. Tenn. Sup. Ct. R. 30 regarding media guidelines shall be strictly enforced.

Video, audio, and photographic equipment may not produce sound or light during any court proceeding. Flash attachments shall not be used. Cameras that produce a shutter sound will not be permitted.

In addition to the guidelines contained in Tenn. Sup. Ct. R. 30, any media outlet wishing to livestream all of or a portion of a proceeding shall indicate as such in its request for media

coverage. However, requests to livestream a trial or any portion thereof must be filed eight (8) business days in advance of trial. Livestreaming of any court proceedings require permission of the court.

### **Rule 11. Amendments.**

Whenever the court determines that justice requires it, the court may amend, alter, or make additions to these rules.