

# **TWENTY-FIFTH JUDICIAL DISTRICT**

## **LOCAL RULES OF THE CHANCERY COURTS OF FAYETTE, HARDEMAN, LAUDERDALE, McNAIRY AND TIPTON COUNTIES**

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**(Revised 7-15-04)**

**TWENTY-FIFTH JUDICIAL DISTRICT**  
**LOCAL RULES OF THE CHANCERY COURTS OF**  
**FAYETTE, HARDEMAN, LAUDERDALE AND TIPTON COUNTIES**

**RULE 1. APPLICABILITY AND SUSPENSION**

**1.01 Former Rules Abrogated.**

All of the former rules of local practice and procedure, except as readopted herein, are abrogated.

**1.02 Applicability.**

Pursuant to **Rule 18 of the Tennessee Supreme Court**, the following rules are adopted and promulgated for the purpose of expediting the business of the Chancery Courts of the Twenty-Fifth Judicial District of Tennessee. These rules shall be spread upon the minutes of each Court in accordance with **Tennessee Code Annotated §16-3-307**, copies shall be distributed by the Clerk and Masters to all attorneys practicing in the Twenty-Fifth Judicial District, and a copy shall be forwarded to the Administrative Office of the Courts.

If any portion of these Local Rules is found to be in conflict with the Tennessee Rules of Civil Procedure or the Tennessee Rules of Appellate Procedure, then the **TRCivP and TRAP** Rules will prevail.

**1.03 Suspension and Waiver of Rules.**

Whenever the Court determines that justice requires it, the Court may suspend or waive any of these rules.

**RULE 2. APPEARANCE, WITHDRAWAL, CONDUCT AND FEES OF ATTORNEYS**

**2.01 Counsel of Record; Entry of Appearance.**

All counsel who have entered an appearance in a case will be the attorneys of record. Entry of an appearance shall be made by a written request by counsel to the Clerk that an appearance be entered, by the filing of pleadings, or by the filing of a formal notice of appearance.

**2.02 Withdrawal of Counsel.**

No attorney will be allowed to withdraw except for good cause shown and by leave of Court, upon written motion and written notice to the former client at the last known address.

**2.03 No Appearance of Attorney Entered; Copies of Pleadings to Pro Se Parties.**

If a party does not have an attorney of record, copies of all pleadings filed shall be furnished to the party. If a party does not have counsel of record, that fact shall be called to the attention of the Court before any action is taken on any pleading which affects the case. Once a default is entered, only orders of the Court need to be sent to parties without counsel.

**2.04 Conduct of Attorneys and Parties.**

(a) No attorneys, parties or any other person having any interest in a case set for trial shall engage in any conversation with any juror serving in that Court until the juror's term of service has ended, except by leave of Court.

(b) Attorneys should refrain from holding any private ex parte conversations with the Chancellor in the Courtroom during the trial of a contested case, or while the Chancellor is outside during the recess of a contested hearing, unless leave has been first publicly asked and obtained.

(c) An attorney and his or her client(s) should treat the opposing attorney, the opposing party, the Court and the members of the court staff with courtesy, civility and fairness, conducting business in a professional and cooperative manner at all times.

**2.05 Setting Attorney Fees.**

Whenever it is necessary for the Court to set the fees of an attorney, the attorney shall be prepared to present a statement of the time spent on the case, a suggestion of the hourly rate and the amount of a proper fee, and any other information requested by the Court.

**2.06 Contacting the Chancellors.**

No attorneys or parties shall contact a Chancellor ex parte about any pending case, unless there is an emergency, except by letter, and a copy of any such letter shall also be sent to all attorneys of record, or to parties if not represented, and to the Clerk and Master for the file. Any telephone contact should only be by a conference call, with all attorneys of record, or parties, if not represented, to be on the line at the time of the call.

**RULE 3. ASSIGNMENT AND DISPOSITION OF CASES**

**3.01 Assignment of Cases.**

The Chancellors of the Twenty-Fifth Judicial District will be responsible for hearing all Chancery cases in **Fayette, Hardeman, Lauderdale, McNairy and Tipton Counties**, and each will arrange his or her schedule each month in the various counties in accordance with the need and caseload, and without regard to any particular Term.

**RULE 4. COURT SESSIONS AND PROCEDURE**

**4.01 Court Sessions.**

The sessions of the Court will normally be held **Monday through Friday, from 9:30 A.M. until 4:30 P.M.**, with a recess from 12:00 Noon to 1:15 P.M., but the Chancellor holding

the Court Session may, in his or her absolute discretion, change the times.

#### **4.02 Courtroom Procedure.**

All persons in the Courtroom will stand **(1)** while Court is being opened; **(2)** following the lunch recess; and **(3)** when Court is adjourned for the day.

The Court officer, bailiff or Clerk and Master shall open Court as follows: Oh, Yes! Oh, Yes! the Chancery Court of \_\_\_\_\_ County is now open, pursuant to adjournment, with the Honorable \_\_\_\_\_, Chancellor, presiding. God save the United States, the State of Tennessee and this Honorable Court. Please be seated, there will be no smoking in the Courtroom.

All attorneys will wear proper attire while in the Courtroom.

#### **4.03 Clerk and Masters Prohibited from Giving Legal Advice and Preparing Pleadings.**

The Clerk and Masters and their employees always desire to be of help to litigants and attorneys. However, interpreting the Rules of Procedure and giving legal advice are not permitted. Notice is also given to litigants and attorneys that the Clerk and Masters and their employees assume no responsibility for information given regarding the applicable procedural rules, substantive law, or the interpretation of Local Rules of Court. The Clerk and Masters and their employees are also not allowed to practice law and cannot prepare pleadings, orders or other legal documents, unless specifically authorized by a Chancellor.

### **RULE 5. PROCEDURES FOR EXTRAORDINARY RELIEF**

#### **5.01 Attachments of the Person or Property.**

Despite any statutory authority to the contrary, Clerk and Masters shall not issue attachments for the body in contempt cases, and shall not issue attachments for real or personal property, without a fiat signed by a Chancellor or other authorized Judge. Clerk and Masters may issue show cause notices, without a fiat from a Chancellor or Judge.

#### **5.02 Restraining Orders and Temporary Injunctions.**

As provided by **TRCivP 65**, in all non-domestic relations cases, proposed separate restraining orders, showing irreparable injury or harm and with a space for the setting of a proper bond, shall be prepared by counsel prior to submitting the request for relief to the Court. The restraining order shall also provide for the setting of a hearing for a temporary injunction and shall provide a place thereon for the Court to set a date, time and location for such a hearing. A bond is usually mandatory.

Applications for temporary injunctions in regard to **foreclosure sales** must comply with the mandatory requirements of **T.C.A. §29-23-201, et.seq.**

#### **5.03 Setting Hearings for Interlocutory Relief.**

Hearings on applications for temporary injunctions and other forms of extraordinary relief shall be set as provided in **Rule 5.02**, or in cases where no restraining order is used, **(1)** upon motion, or **(2)** by an order setting the date, time and location for the hearing.

**5.04 Evidence at Hearings for Interlocutory Relief.**

All hearings for temporary injunctions and other forms of extraordinary pre-trial relief shall normally only be heard upon affidavits or depositions.

**5.05 Orders of Protection**

Orders of Protection are usually issued to be effective for one (1) year. When an Order is entered prior to the granting of a divorce, the attorney preparing the Final Decree of Divorce should designate if the Order of Protection is to be extended or dismissed, and an appropriate separate Order should be signed by a Chancellor.

**RULE 6. COURT FILES**

**6.01 File Removal and Return.**

No Court files are to be removed from the office of the Clerk and Master unless signed for by an attorney of record or by the Chancellor. Court files are **not** to be removed from the County of the Clerk's office where the case is filed, and all Court files must be returned to the Clerk and Master's office by the closing time of the same day the file is removed.

Copies of the contents of files, that are **not confidential**, will be furnished by the Clerk and Masters at reasonable costs.

**RULE 7. FILING AND SERVICE OF PAPERS**

**7.01 Filing with the Clerk.**

All papers, including pleadings, motions, briefs, decrees, judgments and orders shall be filed with the Clerk and Master and shall be typewritten, or printed by hand, on letter size paper, with sufficient margins to allow for the Clerk's filing stamp and other minute entry information.

**7.02 Certificate of Service.**

All filed papers must contain a certificate of service, which must include the date of service and a certification that all attorneys of record, or parties if not represented, have either been mailed to their last known address, or delivered, an exact copy. The Clerk may refuse to file or enter judgments, decrees, orders or other pleadings and papers without a sufficient certificate of service that complies with these rules and all applicable rules of Civil or Appellate Procedure. (TRCP58) An attorney may also want to have the Clerk execute the certificate so that there is no dispute that a copy was mailed to the other party in ex parte matters.

**7.03 Certificate of Divorce.**

No divorce complaint shall be accepted by the Clerk and Master for filing unless a Certificate of Divorce accompanies the same. The Clerk and Master shall supply the Certificate of Divorce forms and shall tender to the attorney, or a party, if not represented, the copies necessary prior to the filing of the complaint for divorce.

**7.04 Pauper's Oath.**

Complaints to be filed on the pauper's oath must be accompanied by the required supporting affidavit, and approved by a Chancellor. The forms will be provided by the Clerk and Masters.

## **RULE 8. PRE-TRIAL MOTIONS**

### **8.01 Time for Filing Pre-Trial Motions.**

Pre-trial motions which affect the merits, of one or more issues in a case must be filed and disposed of before a case is set for trial.

### **8.02 Time for Filing Responses to Motions.**

Responses to motions, including counter-affidavits, depositions, briefs or any other matters being presented in opposition to motions must be filed or submitted and furnished to opposing counsel no later than five (5) days in advance of the hearing on the motion.

### **8.03 Briefs on Motions and Responses.**

Every motion which affects the merits of one or more issues in a case, or which requires the resolution of an issue of law, shall be accompanied by a brief or memorandum of law and facts in support thereof.

Reply briefs must be submitted and furnished to opposing counsel no later than 24 hours in advance of the hearing on the motion.

### **8.04 Striking or Postponement of Motions.**

After a motion has been docketed, no party may strike or postpone a motion without the agreement of all parties, or with leave of the Court, and the Court will impose sanctions when deemed appropriate.

### **8.05 Motions for Summary Judgment**

As provided by **TRCivP 56**, a motion for summary judgment must be accompanied by a separate concise statement of material facts about which the moving party contends there is no genuine dispute. The party opposing the motion must respond in writing to each fact set forth by the movant **(1)** by agreeing that the fact is undisputed; **(2)** by agreeing that the fact is undisputed for purposes of ruling on the motion only; or **(3)** by demonstrating that the fact is disputed. The non-movant's response may contain a concise statement of additional facts that the non-movant contends are material and as to which the non-movant contends there exists a genuine issue to be tried. The moving party shall also be allowed to respond to the additional facts by filing a reply statement. All references to depositions and interrogatories shall include the specific questions, answers and page numbers.

## **RULE 9. DISCOVERY, OFFERS OF JUDGMENT AND INTERROGATORIES**

### **9.01 Discovery Documents to be Filed Only When Used at a Court Hearing.**

Interrogatories, depositions and requests for production, responses, or any other discovery documents, shall not be filed with the Clerk and Master unless and until the materials are to be used at a court hearing, or are requested by the Court.

**9.02 Discovery Motions and Conferences.**

To curtail undue litigation, the Court will refuse to entertain any motions for discovery until the attorneys, and/or a party, if not represented, have held a mandatory discovery conference and made a good faith effort to resolve all disclosure disagreements and to develop a binding discovery plan in writing. An attorney shall file with any discovery motion, a statement that a good faith effort has been made to resolve any discovery problems, including a description of what has actually been done. If the Court is advised in writing that an opposing attorney, or a party, has refused to cooperate, or has otherwise delayed a resolution of discovery requests or disagreements, the Court will take such action as deemed appropriate to avoid further delay, including the imposition of sanctions.

**9.03 Reference of Discovery Disputes.**

The Court may refer discovery disputes to a Special Master.

**9.04 Offers of Judgment**

**TRCivP 68** provides that, at any time up to ten (10) days prior to trial, either party may serve on the adverse party a written offer of judgment for money, property, or any other relief specified in the offer, including the results of an unsuccessful mediation, with costs then accrued. If the adverse party rejects the offer of judgment and if the judgment finally obtained is not more favorable than the offer, the offeree must pay the costs incurred by the offeror after the offer was made, including attorney fees, if authorized by Tennessee law.

When an offer is accepted, a consent judgment will be entered that is a final judgment subject to appeal. Such a judgment will only be altered on a showing of fraud or a mutual mistake of fact. Any acceptance of an offer of judgment must be unconditional, but a rejection of an offer does not preclude a subsequent offer. An offer which is not accepted within ten (10) days is deemed withdrawn.

The purpose of this Local Rule is to encourage the use of **TRCivP 68** which authorizes an offer of judgment to an adverse party in order to facilitate the compromise and settlement of litigation.

**9.05 Interrogatories**

Written interrogatories, including sub-questions, shall not exceed fifty (50) in number without the express permission of the Court.

**RULE 10. COURT REPORTERS**

The name, address and phone number of any court reporter participating at a hearing shall be noted by the Clerk and Master on the Court file jacket, with the date of the hearing.

## **RULE 11. SETTING CASES FOR TRIAL AND CONTINUANCES**

### **11.01 Daily Court Docket Lists.**

As authorized by **TRCivP 40**, on the days designated by the Chancellors as Court Days, the Clerk and Master shall usually be responsible for the setting, **by consent**, of all cases. The Clerk and Master shall prepare in advance of each day of Court, a written list of the cases to be heard on that day, giving the cause number, syle, nature of the case, and the attorneys involved. The uncontested and contested cases and contested motions shall be separated on the docket list, and shown in the following order: **(1)** uncontested cases and uncontested motions; **(2)** petitions for orders of protection; **(3)** contested motions and contested cases. Any case not appearing on the Clerk's Docket list will not be heard except by special permission of the Chancellor. The attorneys shall be responsible for advising the Clerk and Master of the cases and motions to be heard, and the expected length of time it will take to dispose of each matter. In order to prevent the significant inconvenience to the parties and witnesses, every effort will be made to avoid having to continue matters because of the setting of too many contested cases on a court day. If an action is "crowded out", the Chancellor will assign it a new trial date as soon as possible.

The Clerk and Master shall not place any contested case on the docket if the following required and applicable documents are not in the file:

- 1. Briefs** in non-domestic cases;
- 2. Financial affidavits** in all temporary child and spousal support motions and petitions for modification; and **financial affidavits and a joint list of all marital assets, all indebtedness, and all separate property** in contested divorces; or
- 3. Psychological evaluations and/or other confidential or special reports** that have been requested by the Court in child parenting disputes.

### **11.02 Method of Setting Cases and Motions for Trial or Hearing**

Cases are to be set on the docket in the following manner:

**(a)** The usual and preferred method is **by consent** of all attorneys of record, after consultation with the Clerk and Master, and notice to any party not in default and not represented by counsel. The secretaries of the Chancellors do not set cases, motions, or court dates. The Clerk and Master of the country where the action is filed is the proper person to contact for a setting and court date.

**(b)** At a **Docket Call**.

**(c)** **In open Court**, with all attorneys present.

**(d)** By **written motion**, with proper notice to all attorneys of record, or to parties, if not represented and not in default (**TRCivP 40**).

**(e)** Under the **thirty day rule**, as provided in **Rule 11.03**, if the parties cannot otherwise agree.

**(f)** Upon **notice** from a Chancellor for a **special setting**.

### **11.03 Setting Cases Under the Thirty Day Rule.**

After a cause is ready for hearing, or after the time for taking proof has expired, if the parties cannot reasonably agree, the attorney for either party may have it set for trial under the provisions of this rule. This rule shall be known as the **Thirty-Day Rule**. (See **TRCivP 40**)



The procedure shall be as follows: The Clerk and Master shall keep a Trial Docket, which can be a notebook. An attorney, after making a reasonable effort to have a case set by consent, may send a letter to the Clerk and Master, along with copies to all counsel of record, or to parties if not represented, a request that the case be set under this rule. The Clerk shall set the cause for hearing on a fixed date not earlier than thirty (30) days thereafter, and shall notify by letter all attorneys of record, or the parties, if not represented. The mailing of the letter shall be at least thirty (30) days before the date on which the cause is set for trial. The attorneys of record, or the parties, if not represented, shall have **ten (10) days**, from the date of the mailing of the 30 day notice, to obtain a continuance from the Chancellor, for good cause shown, otherwise, the case will stand for trial as set by the Clerk and Master, under this Rule.

This rule shall not apply to **jury cases**, but shall apply to all other cases, including contested domestic relations cases.

#### **11.04 Continuances and Sanctions.**

(a) Jury cases may not be continued by agreement except by leave of Court.

(b) The absence of a witness will not be grounds for a continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and the Rules of Civil Procedure.

(c) In cases continued where the required financial affidavits, proposed division of marital assets and marital debts, confidential reports, or briefs have not been filed, or for any other reason, without good cause shown, the Court may, **as sanctions**, award expenses and attorney's fees, including compensation to witnesses for lost income and/or travel expenses, and tax the same as Court Costs.

#### **11.05 Motions Presented by Conference Telephone Calls**

By agreement of all counsel of record, or parties if not represented, and with the permission of the Chancellor, a motion for continuance, or other short motions, may be presented by a conference call to the Chancellor.

#### **11.06 Motions for New Trial and Motions to Alter or Amend a Judgment**

Motions for New Trial and Motions to Alter or Amend a Judgment shall normally be heard within thirty (30) days from the date of filing, unless an extension is agreed to by all parties.

#### **11.07 Civil Actions or Motions Heard Outside of the County in which a Case is Filed.**

No uncontested divorce case, or any other contested civil action or motion, will be heard outside of the county in which the case is filed, without the special permission of the Chancellor. (See TRCivP 6.03{2}) The Court will hear worker's compensation and minor's settlements outside the county where a case is filed, with proper notice to the Clerk and Master of the county involved. In any case which is heard, by permission of the Chancellor, at a place other than the county in which the cause is filed, it shall be the responsibility of the attorneys to present to the Court, at the time of the hearing, the **copies** of all pertinent motions, petitions, complaints, briefs or other pleadings, and a **docket sheet**, but **not** the **original court file**, unless requested by the **Chancellor**.

## **RULE 12. SUBPOENAS**

### **12.01 Subpoenas Issued by Clerk and Master.**

All subpoenas for witnesses shall be issued and signed by the Clerk and Master in triplicate. One copy shall be designated "file copy" and retained in the file. The original shall be the return copy. When the original subpoena is returned to the Clerk, the Clerk may remove the file copy and discard it.

### **12.02 Time for Issuing Subpoenas.**

Before the failure to obtain service of a subpoena upon a material witness shall be considered as a ground for a continuance, the subpoena for a local witness must have been issued and dated by the Clerk and Master not later than **three (3) days** before the date of the trial; if the witness resides out of the county, the subpoena for such witness must have been issued by the Clerk and Master and mailed or otherwise transmitted to the out-of-county Sheriff or Process Server not later than **seven (7) days** before the date on which the case is set for trial.

### **12.03 Responsibility of Counsel.**

The attorneys of record shall be responsible for insuring that all subpoenas are issued in accordance with this rule and the applicable rules of Civil Procedure.

## **RULE 13. PRE-TRIAL PROCEDURE AND BRIEFS**

In all civil actions set for a trial on the merits:

**A.** At least twenty-four hours prior to the trial date, copies of all exhibits which are proposed to be offered (other than impeachment or rebuttal exhibits) shall be furnished to opposing counsel. When it is impractical to copy exhibits, the proposed exhibits shall be made available for inspection upon reasonable notice. The attorneys shall also arrange to have all exhibits listed and marked by identification in numerical sequence prior to the opening of Court on the trial date.

**B.** Depositions to be used as evidence (other than for impeachment) shall be filed with the Clerk.

**C.** In all contested non-jury cases, except domestic relations matters and routine worker's compensation cases, the attorneys for the parties, unless waived by the Chancellor, shall file with the Clerk and Master, and serve on opposing counsel, a trial brief not less than forty-eight (48) hours before the case is set for trial. The brief should contain:

- 1.** A concise statement of the facts;
- 2.** The issue(s) to be determined by the Court;
- 3.** Propositions of law with citation of authorities to sustain each proposition; and
- 4.** Argument, which is optional.

All citations to Tennessee decisions must include the Southwestern Reporter (1st, 2<sup>nd</sup> or 3<sup>rd</sup> where applicable). All citations must be Shepardized. A photo

copy of current (not yet published) or unreported Tennessee decisions or statutes, any out of state opinions, or statutes, cited are to be attached to the trial brief.

A copy of each brief should also be mailed or delivered to the Chancellor prior to the trial date, with the original being filed with the Clerk and Master.

**D.** If an issue has been briefed in pre-trial motions and counsel believes that the motion brief adequately covered the issue, counsel may refer the Court to the motion brief in lieu of briefing the issue again for trial.

**E.** In cases involving multiple parties and cases consolidated for trial, any number of parties may join in a single brief, and any party may adopt by reference any portion of the brief of another party. Parties may similarly join in reply briefs.

**F.** In non-domestic relations cases, the attorneys may request a waiver by the Court of the requirement that briefs be filed, in those cases which are essentially factual disputes, and there is no dispute about the applicable law.

## **RULE 14. EXHIBITS**

### **14.01 Depositions and Discovery Material.**

Depositions and discovery material submitted to the Court as evidence which are not read verbatim at a trial or hearing in open Court, but are read by the Court separately, shall still be made trial exhibits, as if read verbatim.

### **14.02 Custody of the Clerk and Master.**

All trial exhibits shall be accounted for and placed in the custody of either the Clerk and Master, or the court reporter, at the end of each trial day, unless otherwise directed by the Court.

### **14.03 Disposition of Exhibits.**

After the final determination of any case, the parties, and their attorneys, shall have 30 days to withdraw exhibits. The Clerk and Master may destroy or dispose of exhibits not so withdrawn, after giving written notice to the attorneys of record, or to a party, if not represented.

## **RULE 15. REQUESTS FOR SPECIAL JURY INSTRUCTIONS, JURY VERDICTS AND FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **15.01 Requests for Special Jury Instructions.**

When counsel submits special requests, pursuant to **TRCivP 51**, copies shall be furnished to adversary counsel. When a request for an instruction is made and the request is for a **Tennessee Pattern Jury Instruction** verbatim, the request shall be made by reference to "**TPI (Civil) No. \_\_\_\_\_**". If the request is for a modification of an existing instruction, the request shall identify the instruction to be modified by number and identify the deletion or addition. When a request for an instruction is made and there is no instruction on the subject in the Tennessee Pattern Jury Instructions, this fact must be stated in the request.

### **15.02 Special and General Verdicts and Special Instructions in Jury Cases.**

Requests for special verdicts or written interrogatories made pursuant to **TRCivP 49**, or a request for a general verdict, must be made before commencement of the trial and must be accompanied by proposed verdict forms, or written interrogatories, and any proposed special instructions which are to be given to the jury.

### **15.03 Written Findings and Conclusions of Law**

Requests for written findings of fact and conclusions of law should be accompanied by proposed findings of fact and conclusions of law and submitted in writing prior to the entry of a judgment. The Court may decline to make written findings if the findings and conclusions have been stated from the bench.

## **RULE 16. JUDGMENTS, DECREES AND COURT COSTS**

### **16.01 Preparation of Orders and Judgments.**

Unless the Court directs otherwise, the attorneys for prevailing parties will prepare orders, judgments and decrees for entry by the Court.

### **16.02 Time Allowed for Submission of Judgments or Decrees.**

Judgments and decrees presented to the Court will normally be approved by signature of all attorneys of record in the cause and forwarded to the Clerk and Master within seven (7) days after the rendering of a judgment by the Chancellor, or a verdict by a jury. In cases taken under advisement by the Chancellor, such judgments shall be prepared, approved by counsel, and forwarded to the Clerk and Master within seven (7) days from the receipt by counsel of the decision of the Court. The Clerk and Master is to notify the attorneys if a judgment or decree is not entered within the required seven (7) days. The prompt entry of judgments, orders and decrees is imperative, and if the attorney(s) fail to comply within thirty (30) days after notice from the Clerk and Master, then a show cause order for contempt will be issued by the Court.

### **16.03 Court Costs.**

**A.** All final judgments or orders of dismissal shall provide for the taxing of court costs. The Clerk and Master may refuse to enter any agreed final judgment, non-suit, or other final order until payment of the court costs is provided for in the decree.

**B.** Whenever a judgment has become final and the court costs have not been paid, and after a reasonable effort has been made to collect, the Clerk and Master may apply to the Court for a re-taxing of Court costs. **See Tennessee Code Annotated, §20-12-137 and 138.** The Clerk shall notify the parties by **five (5) days** written notice of the application and the date and time it will be considered by the Court.

**C.** In all cases where a plaintiff in a domestic relations action has dismissed his or her complaint, or the Court has dismissed the complaint for lack of prosecution, and where the cost has been adjudged against the plaintiff or against both parties, the Clerk and Master shall not file any further action of divorce tendered by the plaintiff or plaintiff's attorney until the costs in the original action have been paid. **(See TRCivP 41.04)**

### **16.04 Default Judgments.**

**A.** In accordance with **TRCivP Rules**, a default judgment will not be entered by the

Court unless a **full thirty (30) days** has expired from the date of service of process. (Note - When service is by publication, the date of service is the date of the last publication and a default cannot be taken until 30 days have expired from that date.)

**16.05 Non-Minute Entry Orders.**

As a means of saving expenses, orders not affecting the legal merits of an action, such as orders assigning a court date to a case for trial, or acting upon a request for a continuance, may be designated by the Clerk and Master as a non-minute entry order. Such designated orders shall be placed in the file of the case but do not have to be spread upon the Minutes of the Court.

**16.06 Payment and Satisfaction of Judgments.**

**A.** Funds paid to the Clerk and Master by check on local banks do not have to be disbursed until **ten (10) days** after the Clerk receives the check. Clerk and Masters do not have to accept out of county or out of state personal checks, and may also require that alimony and child support payments be paid by cash, certified check, or money order, so that the payments can be disbursed immediately upon being received.

**B.** Orders for disbursing funds, other than agreed orders, must be **final** before the Clerk and Master will disburse the funds.

**C.** Upon receipt of payment in satisfaction of a judgment, whether through the Clerk and Master or otherwise, counsel will satisfy the docket by certifying receipt of the judgment on the docket book.

**16.07 Entry of Judgments and Decrees Without the Approval of all Attorneys or Where There is Disagreement as to Terms.**

In the instance where the approval of all attorneys of record cannot be reasonably obtained, judgments and decrees, with a certificate attached showing that a copy has been simultaneously mailed or delivered to opposing counsel, which are presented to the Chancellor containing only the signature of the attorney preparing the judgment or decree, will not be entered immediately, but will be held by the Court for **seven (7) days**. If the Chancellor receives no objection within the **seven (7) day period**, the judgment or decree will be entered. Where the attorneys disagree as to the terms of a judgment or decree, one should be prepared by the attorney for each side and submitted to the Chancellor, either for his or her action thereon, or for the setting of a court hearing to resolve the disagreement.

**RULE 17. PROCEDURES FOR DIVORCES, PARENTING PLAN DISPUTES AND PENDENTE LITE HEARINGS.**

**17.01 Parenting Plan Classes or Seminar:** In all domestic cases involving parents of minor children, the parents, who are not in default, must each attend a certified and approved parenting plan seminar, and file a certificate of compliance prior to any hearing on the merits.

**17.02 Contested Divorces and Petitions for Modification involving Parenting Plans, Child Support and Alimony. Procedures regarding Discovery, Joint Itemized Lists, Financial Affidavits, Settlement Conferences, Mediation, Psychological Evaluations,**

## **Guardian Ad Litem and Sanctions.**

### **A. Exchange of Discovery, Joint Itemized List and Financial Affidavits.**

If there is a dispute concerning the division of marital property, marital indebtedness, child support, alimony, shared parenting, separate property, separate debts, or any other contested matter, the parties and their attorneys must meet, in good faith, prior to any mediation or settlement conference, and exchange all relevant financial and medical records and information, and financial affidavits of all income and expenses. At the meeting, the parties, and their attorneys are to prepare one detailed and itemized joint list of all marital property, all indebtedness and all separate property, if any, with each party's valuation. The joint list is to be on forms provided by the Court. Each party should bring an itemized proposed list to the meeting in order to expedite the preparation of the joint list.

Household goods, appliances, furniture, vehicles, equipment and other tangible personal property must be listed, but will not usually be litigated, and will be disposed of by lot selection or by sale, if the parties cannot agree.

Not later than **seven (7) days** after the meeting, the completed Joint List with valuations, after the approval by the parties and their attorneys, and the Financial Affidavits are to be filed with the Clerk & Master, and the parties must also decide: (1) If they want to attend a pre-trial settlement conference with a Chancellor first to try and save the expense of mediation, or (2) if they want to proceed directly to mediation.

In any event, a case is **not to be set for trial** until after (1) mediation, (2) if appropriate, independent psychological evaluations or a guardian ad litem's report, and (3) at least one pre-trial conference with a Chancellor.

**B. Mediation** - All litigants involved in **petitions for modification of child support or alimony, contempt cases, other than simple arrearage matters, contested divorces and/or contested parenting plan cases**, after attending any required parenting classes or seminar, **must**, with their attorneys, prior to a trial on merits, attend **mediation**. Mediation will only be waived in extraordinary situations, after a conference or hearing, with all parties and their attorneys being present.

If the parties elect to attend a pre-trial conference first, and they are not able to resolve their differences, then the parties and their attorneys are to proceed, in good faith, to mediation. The mediator is to be furnished a copy of the joint statement of marital property, indebtedness, and separate property, and a copy of the financial affidavits. The mediator is to file a report, and, if the mediation was unsuccessful, the mediator is to indicate if a party did not cooperate and did not participate adequately in the proceedings.

**C. Psychological Evaluations or Counseling** - If shared parenting of minor child(ren) is in dispute, then at some point in the proceedings, but prior to any trial on the merits, the Court will consider obtaining independent psychological evaluations concerning the best interests of the minor child(ren).

**D. Pre-Trial Settlement Conferences** - If the parties elect prior to mediation, or if mediation is not successful, in all contested divorces and/or cases involving the establishment or modification of a permanent parenting plan, the parties and their attorneys must, prior to the case being set for trial, attend a settlement conference with a Chancellor. Conferences are also required in cases involving the modification of child support or alimony, and in contempt cases, other than simple arrearage matters. The joint list, and the financial affidavits must be filed prior to the setting of any pre-trial conference. At the conference, even if the initial mediation was unsuccessful, the Court may order the parties to proceed with **additional mediation**,

**E. Appointment of Guardian Ad Litem for Children** - When the Court finds that it is in the best interest of the minor child(ren), a guardian ad litem will be appointed to represent the child(ren), to investigate the circumstances of the child(ren) and to file a written report, with recommendations concerning the shared parenting of the child(ren).

**F. Costs of Mediation, Guardian Ad Litem, Psychological Evaluations and Counseling**

The costs and fees of mediation, guardian ad litem(s), counseling and psychological evaluations are normally to be shared equally by the parties.

**G. Role of Attorneys in Dispute Resolution**

The attorneys will need to explain to their clients that during the initial filing, education, mediation, counseling, settlement conferences, or other dispute resolution process, the attorneys are expected to act as advisers and counselors, and not as litigators. The parties need to understand that contentious litigation is expensive and detrimental, and, in parenting plan cases, is very harmful to minor children and their parents, and to their continuing relationship with each other.

**H. Sanctions**

If any party, or their attorney, fails to reasonably cooperate, fails to comply with, or refuses to adhere to, the requirements of these procedures, the Court will impose sanctions as deemed appropriate.

**17.03 Temporary Parenting Plans**

**A.** If the other party is not represented by counsel, a temporary parenting plan may be presented **ex parte** by an attorney (not by a staff member), **in good faith**, as a request for extraordinary relief:

(1) when there will be no significant change in the status quo situation of the minor children; or

(2) when there is an emergency situation that affects the welfare and best interests of the minor child(ren), and that requires an immediate change in the status quo of the child(ren).

**B.** If an **ex parte** application is denied, then it obviously should not be submitted to a different Judge or Chancellor without a full disclosure and explanation.

**C.** If the parties are represented by counsel, and if a temporary parenting plan is either

requested or one previously granted needs to be modified, and the parties cannot agree, then the parties should each present, by their attorneys, a proposed temporary plan for a conference and review by a Chancellor. The Court will normally not hear testimony or have a contested hearing concerning the entry of a temporary parenting plan.

**17.04 Pendente Lite Hearings.**

Motions for pendente lite relief in domestic cases shall include a statement of facts justifying the relief sought and prior to the hearing the parties will submit financial affidavits and any other pertinent financial information and/or affidavits in support of, or in opposition to, the relief sought. Testimony by witnesses in support of, or in opposition to, the motion shall usually not be allowed.

**17.05 Statement Required in Contempt Proceedings for Failure to Pay Child Support or Alimony.**

In all cases involving delinquent child support or alimony payments, a statement shall be filed showing the amounts of each payment and dates paid during the period of delinquency, the amount now delinquent, and any other pertinent information. If the payments are being made through the Clerk and Master's Office, then the statement should be prepared by the Clerk and Master. If the payments are not being made to the Clerk and Master, and there is a dispute about the amount that is delinquent, the case will not be heard until the parties and their attorneys have had a conference in which all cancelled checks and other receipts have been reviewed and reconciled, and the required statement has been prepared and filed. If the payments are being made by wage assignment to the appropriate Nashville office of the Department of Children's Services, then a computer generated statement of the amounts paid will normally be accepted by the Court in determining any delinquency.

**17.06 Show Cause to be Normal Procedure in Contempt Cases.**

In all contempt cases involving delinquent child support, or alimony, or other failure to comply with the previous orders of the Court, except in unusual circumstances such as previous difficulties in obtaining service, or threats and/or violence, a defendant shall be served with an Order or Notice directing him or her to appear at a time and place specified to show cause as to why he or she should not be held in contempt.

**17.07 Removal of Spouse from Home of the Parties without a Hearing.**

Except in cases in which there are detailed sworn allegations in the complaint of serious threats and violence, a spouse shall not be removed or prevented from returning to the parties' home without a hearing and notice to the spouse. Even in those cases in which there are the required sworn allegations in the complaint, it is still discretionary with the Chancellor or Judge as to whether to grant a restraining order or temporary injunction without a hearing and notice to all parties.

**17.08 Computation and Determination of Child Support.**

Child Support will be based on the applicable statutes and guidelines, and, if the parties cannot agree, the attorney(s) involved will prepare the necessary worksheets and calculations to



aid the Court in the determination of the appropriate amount of support to be paid.

## **RULE 18. PROCEDURES FOR ADOPTIONS**

### **18.01 Presentation of Testimony.**

Adoptions are **confidential** proceedings, and the testimony of the adopting petitioners and any other witnesses will be heard privately outside the courtroom.

### **18.02 Attendance of Adoptive Child(ren).**

The child or children involved in the adoption shall attend the Court hearing, unless waived by a Chancellor. The attendance of any child age 14 or older, and the execution by the child of the required statutory form, is mandatory.

## **RULE 19. JURY TRIALS IN CHANCERY COURT**

### **19.01 Procedure.**

In any civil case in which a jury is demanded, the words "**JURY DEMANDED**" shall be typewritten in capital letters on the first page of the pleading opposite the style of the case above the space for the case number.

### **19.02 Number of Jurors.**

In all civil cases, the parties may stipulate that the jury will consist of any number of persons less than twelve.

### **19.03 Challenges.**

The stipulation, as to the number of jurors, shall not affect the number of challenges nor the manner of making them, as provided in the Rules of Civil Procedure.

### **19.04 Notifications to Clerk and Master of Jury Demand.**

When a case in Chancery Court is to be tried before a jury, counsel shall call that fact to the attention of the Clerk and Master when the case is ready to be set for trial.

### **19.05 Pre-Trial Conference Required.**

All jury trials shall be set specially by the Chancellor after a pre-trial conference.

## **RULE 20. JUDICIAL SALES; BIDS; REFERENCES TO A MASTER**

### **20.01 Judicial Sales by Clerk and Master, as Special Commissioner**

Unless the Court orders otherwise, the sale of property under a Court decree, will become final ten (10) days after the sale date, unless the final bid price has been raised by at least 10%.

If any person proposes to advance or raise the bid by 10% or more, he or she shall execute and deliver to the Clerk and Master (1) cash, or (2) a certified check, or (3) a money order, or (4) a bond with one or more sufficient sureties, in the amount of the raised bid.

Upon the execution and delivery of one of the required methods of advancing the bids, and its acceptance by the Clerk, the Clerk shall, upon demand, refund to the original bidder all money paid as purchaser.

**20.02 Advertising on Resale.**

It is not required that the resale of the property be advertised to the same extent as was done for the initial sale. The parties to the lawsuit, however, may choose to have the Clerk and Master fully advertise the resale of the property. Any dispute about the advertising will be resolved by the Chancellor.

**20.03 Terms of Sale.**

Unless otherwise approved by the Court, the usual procedure for a judicial sale of land by the Clerk and Master, as Special Commissioner, will be to offer the property for sale for all cash.

**20.04. References as to the Advisability of a Sale.**

After the answers of the defendants are filed, or default judgment entered against those not answering, if the right of plaintiffs to a sale is disputed, or if there are minors, persons of unsound mind, or unknown heirs, or non-residents, who are defendants, on motion of the plaintiff, or, on its own motion, the Court will order a reference to the Clerk and Master and/or the Guardian ad Litem.

The Clerk and Master and/or the Guardian ad Litem should diligently inquire as to the facts, especially where persons under disability, non-residents, or unknown heirs, are interested, and where encumbrances are probable. He or she can call before them any witness they deem necessary for the discovery of the truth.

**20.05. Exceptions to a Master's Report.**

**A.** In making their reports upon orders of reference, the Clerk and Masters, immediately upon the filing of their report, will give notice to the parties or their attorneys of record, of the filing of the report and the date of such filing. The parties shall be allowed **ten (10) days** from the filing date within which to except to the report.

**B.** Upon the expiration of the **ten (10) day period**, the Clerk and Master will set the case, for confirmation of the report, or for the hearing of exceptions filed thereto, as the case may be. For sufficient reasons appearing, the Chancellor may enlarge the time for filing exceptions. On the other hand, where all parties consent, reports may be confirmed before the expiration of the ten day period.

**C.** An appeal from, or exception to, a Masters report shall state specifically upon what grounds the appeal or exception is prayed for and shall state whether it is a fact question or a specific legal question appealed or excepted to and shall:

- 1.** Be supported by affidavits if said appeal or exception is upon a fact question;
- 2.** Be supported by brief if the question appealed or excepted to is a legal question or question of law;
- 3.** The affidavits or briefs shall be attached to the appeal or exception when filed.

**20.06 Transcript of Master's Proceedings Required Unless Waived by Order of Reference.**

As required by **TRCivP 53.04**, unless otherwise directed by the Order of Reference, or the Court, the Master shall file with his or her report a transcript of the proceedings and of the

evidence and the original exhibits. When a transcript is not waived by the Order of Reference, the attorneys shall provide for the recording and transcribing of the Master's proceedings, with the responsibility for the costs of the preparation of the transcript to be determined and provided for in the Order of Reference.

## **RULE 21. BONDS AND BONDING COMPANIES**

No bond, which is required by law or by order of the Chancery Court, shall be accepted by the Clerk and Master, unless the bond shall be:

1. in United States Currency; or
2. a corporate surety bond of a firm licensed and authorized to do business in the State of Tennessee; or
3. a personal bond with two good and sufficient sureties, or
4. a personal bond which is signed by the attorney of record in the cause, if the Clerk and Master determines that the attorney has sufficient assets to qualify as a surety.

## **RULE 22. DORMANT CASES AND DOCKET MANAGEMENT**

### **22.01 Dismissal of Dormant Cases.**

To expedite cases, the Court may take reasonable measures to purge the docket of old cases where the cases have been dormant for an extended time, without good cause being shown.

### **22.02 Notice to Counsel of Record.**

All domestic relations cases remaining on the docket for more than **twelve (12) months** from the filing thereof, and all other cases which have been dormant without good cause shown for an extended time of more than **twenty-four (24) months** may be dismissed by Order of the Court on its own motion, after a **ten (10) day notice** is given to the attorneys of record, and the costs will be adjudged against the plaintiff(s) and the sureties

### **22.03 Dismissal for Want of Prosecution.**

Copies of the order dismissing a case for a lack of prosecution shall be mailed to the last known address of all counsel of record or to any party without an attorney of record.

## **RULE 23. PROBATE AND ESTATES**

### **23.01 Petitions.**

**A.** Sworn petitions shall be filed for the probate of all Wills and Codicils, and for the appointment of all administrators, giving the name, residence, and date of death of the decedent, and also giving the name and address of the attorney for the estate.

**B.** Petitions for probate of Wills and Codicils shall also give the dates of the execution of the Will and any codicils, the names of all attesting witnesses, and whether the person named Executor is excused from making bond.

**C.** In all intestate estates, and in all testate estates where bond is not excused in the Will,

the petitions shall give the character and estimated value of the personal estate, and shall also include the annual value expected to be received from the dividends, interest and profits from all property.

**D.** The petitions shall also state that the petitioner is either not aware of any Will, or if there is a Will, or any other paper writing purporting to be the Last Will and Testament of the decedent, and that a due search and inquiry have been made to ascertain that there is either no Will, or no other Will.

**E.** In intestate estates, the petitions shall also list the names, ages, relationships and addresses of all next of kin and heirs at law of the decedent.

### **23.02. Inventory.**

An inventory of all personal property owned by the decedent at the time of death shall be filed, unless waived, for all estates **within sixty (60) days** from the date of the appointment of the executor or administrator

### **23.03. Clerk and Masters Authorized to Hear Routine Probate Matters.**

As authorized by **T.C.A. §16-16-201**, the Clerk and Masters in the Twenty-Fifth Judicial District, except for Lauderdale County where Probate jurisdiction is by Private Act, are authorized, in informal proceedings, to hear and enter Orders in routine probate and estate matters. Probate matters are to be presented by the attorneys and not by a member of their staff.

### **23.04 Fees for Administrators, Executors and Attorneys.**

In all instances where the fees of an administrator, executor or attorney for the estate are not agreed and are to be fixed by the Court, a petition must be filed stating the fees that are being requested. The petition must also contain a certificate that a copy has been mailed or delivered to all persons entitled to notice. If the fees requested are in excess of **\$5,000.00** for any administrator, executor or attorney, then the petition must be accompanied by the affidavits of two disinterested attorneys stating the amounts they consider to be reasonable fees. Any petition requesting a fee for a personal representative or any attorney in excess of **\$10,000.00** will be heard, on notice, by the Chancellor, instead of the Clerk & Master.

### **23.05 Fee Guidelines.**

When fixing the fees of personal representatives and attorneys, the Court will consider the value of the decedent's gross estate, including real estate and personal property passing outside the estate but subject to the filing of estate and/or inheritance tax return(s), and will use the following guidelines in determining the appropriate fees for the personal representatives and attorneys:

<u>VALUE OF GROSS ESTATE</u>	<u>FEES</u>
First \$100,000.00	3% to 5%
Next \$900,000.00	2% to 4%
Over \$1,000,000.00	1% to 3%

These guidelines reflect what may be considered to be reasonable fees, but are not binding on the Court, the parties, or the attorneys. The Court may also award fees based on an hourly rate

rather than setting the fees as a percentage of the gross estate. If there are two or more personal representatives, and there is no agreement, the Court shall apportion the fees in accordance with the services rendered by each representative. The amount of the fees being paid to, and the services being rendered by, accountants, investment advisers, brokers, appraisers or other professionals, will also be considered by the Court in the setting of fees for attorneys and personal representatives. If an attorney also serves as the personal representative, the Court will take into consideration all of the services rendered, but only one fee will be awarded.

**23.06 Closing Estates on Petition, Receipts and Waiver in Lieu of Final Settlement.**

An estate of a deceased person may be closed upon the sworn petition of the personal representative and an order in lieu of a final settlement if:

1. The time for filing claims with the Clerk has expired;
2. No beneficiary is under disability; and no trust is created in a Will;
3. Written evidence of satisfaction and release of all claims filed and the payment of all inheritance and estate taxes is attached to the petition, or filed in the Clerk's office;
4. Every beneficiary has received his or her full share of the estate, and has either joined in the petition, or signed a receipt in which the beneficiary waives notice of and the filing of a final settlement, which receipt is attached to the petition;
5. A statement is made a part of the petition that no part of the estate escheats under the laws of Tennessee, and that the decedent has no pending claims involving the TennCare program.

**23.07. Final or Partial Settlements.**

In all estates which are not closed as provided in **Local Rule 23.06** above, an itemized sworn settlement, with proper notice, must be filed by the executor or administrator with the Clerk and Master within fifteen (15) months from the date of qualification as personal representative, and, if not a final settlement, each twelve (12) months thereafter until the estate is finally settled.

**23.08 Final Orders Closing Estates to be Signed by a Chancellor.**

All final orders closing an estate shall be signed by a Chancellor, and shall indicate if any property escheats to the State of Tennessee and if the decedent has received TennCare benefits.

**RULE 24. PRIVATE SALES OF PROPERTY OF WARDS AND MINORS**

Petitions to sell, or to approve the sale of, the property of wards and minors shall be sworn to, shall state the reason for the need to sell the property; and shall be accompanied by at least one appraisal of the value of the property to be sold, either by a disinterested appraiser, or, when the expense would be excessive, by a copy of the most recent appraisal from the Assessor of Property Office.

**RULE 25. APPOINTMENT OF GUARDIAN AD LITEMS**

A Chancellor will appoint the Guardian ad Litem in all cases. No Guardian ad Litem will

be appointed without the consent of the person so appointed.

**RULE 26. CLERK AND MASTER TO MAINTAIN TICKLER OR REMINDER SYSTEM**

A. Clerk and Masters will maintain suspense files or a tickler or other reminder system in order to keep up with the due dates of Annual Accountings for Guardians and Conservators, Bond renewals, Inventories, and the Partial or Final Settlement, or Closing, of Estates.

**RULE 27. WORKER'S COMPENSATION CASES**

**27.01 Setting for a Trial on the Merits**

Worker's compensation cases do not require a pre-trial conference, but these cases are not to be set for a trial on the merits until:

- A. A benefit review conference has been held and the report has been filed;
- B. All discovery has been completed;
- C. All medical and other evidentiary depositions have been taken and transcribed, or the stipulated medical records and/or physician's reports have been obtained.

**27.02 Statement and Copies of Medical Depositions and Records to be Sent Prior to Trial**

At least three (3) days prior to a trial on the merits, the attorneys for the parties shall send to the Chancellor hearing the case the completed Worker's Compensation Information form required by the Court and copies of the medical depositions and records.

**RULE 28. LAWSUITS BY PRISON INMATES**

**28.01 Pauper's Oath and Filing Fee (Bold)**

Civil suits filed by inmates are governed by Tennessee Code Annotated §41-21-801, et.seq., and §41-21-304. The filing fee provided for in the statutes for suits filed on pauper's oath has been set by the Court at \$75.00 in the Twenty-Fifth Judicial District.

**28.02 Complaints for Divorce and Petitions for Change of Name**

In accordance with the applicable statutes and appellate court decisions, complaints for divorce and petitions for change of name must be filed in the inmate's county of residence or domicile prior to incarceration. An inmate's residence or domicile remains what it was before his or her imprisonment and does not change to the location of his or her confinement. The time spent in involuntary confinement cannot be used to create residence or domicile.

**DEWEY C. WHITENTON**  
Chancellor, Part 1

**MARTHA B. BRASFIELD**  
Chancellor, Part II