

# CRIMINAL PROCEDURE (PRACTICALLY APPLIED)

Hon. Justin C. Angel

Circuit Court Judge, 12<sup>th</sup> Judicial District of Tennessee

## RULE 10: ARRAIGNMENT

- Defendant has the constitutional right to be present.
- Attorney may file a waiver.
- Careful that the Defendant is properly arraigned (plea of not guilty and waiver of reading the indictment)
- Make sure to arraign on superseding indictments and information pleas.
- All arraignments must be on the record.
- No arraignment needed for probation violations

# BONDS

- Bonds
  - Factors in TCA: 40-11-116 & 40-11-118
  - Revocation or modification of bond TCA: 40-11-141 (b)
  - State v. Burgins
  - [https://www.tncourts.gov/sites/default/files/burginsl.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/burginsl.opn_.pdf)

## STATUS AND DOCKET CONTROL

- Manage your dockets!
- Status reviews
- Inquire on discovery and crime lab review
- Give enough reasonable time for discussion and negotiations
- Set it for trial and provide motion days
- When setting a trial, be mindful of other trials in your county, holidays and weekends (especially with a sequestered jury)

## RULE 12: MOTIONS

- Suppression
- Discovery (Rule 16)
- Severance/consolidation (Rule 13)
- Notice of alibi
- Competency
- Notice of increased sentence (death penalty)
- Change of venue

## RULES 18 & 21:CHANGE OF VENUE

- Change of Venue
  - Upon the Defendant's motion or upon the court's own initiative
  - There must be a timely motion accompanied by affidavits.
  - Location of new venue (look at all the factors and make findings)
  - In the alternative, you may consider a change of venue.

## RULE 11: PLEAS

- On the record
- Waiver of all applicable rights
- Acknowledgment of factual basis
- Acknowledgment and understanding of sentence
- Satisfied with attorney
- Verbal plea of guilty
- Judge must state that the court finds the plea to be (knowing and voluntary, and that there is a factual basis)
- See my plea format
- [CRIMINAL COURT PLEA FORMAT.pdf](#)

# PROBATION VIOLATIONS

- Court must conduct a two step process
  - State v. Dagnan
    - [https://www.tncourts.gov/sites/default/files/graig.dagnan.opn\\_.pdf](https://www.tncourts.gov/sites/default/files/graig.dagnan.opn_.pdf)
  - There was a very wise trial judge in that case.
  - Finding by a preponderance of the evidence that the state proved the violation
  - Then court must consider the probation considerations



## RULES 23-31: JURY TRIALS

- Stick to the script
- Place anything you deem important on the record outside of the jury's presence.
- Protect the jury's eyes and ears
- Sequestration
  - Take time to get all of the details right
  - What out for TV and newspaper coverage
  - Transportation
  - Affirm or reject the verdict as the 13<sup>th</sup> juror

## RULE 32: SENTENCING

- Pre-sentence report
- TCA: 40-35-209 requires the sentencing hearing within 45 days (often times that is waived for logistical purposes)
- Sentencing guidelines and factors (put your analysis on the record)
  - Range of offender
  - Range of sentence
  - Concurrent v. Consecutive
  - Probation considerations
- New requirements to provide an estimated release date