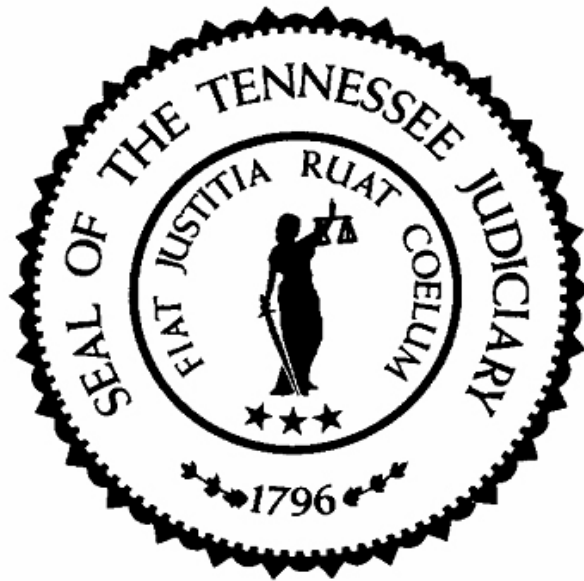


**Summary of Revisions
to the
Tennessee Rules of Procedure**

Civil Criminal Appellate Juvenile Evidence



Effective July 1, 2007

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 15 – Amended and Supplemental Pleadings

15.01 has been amended to eliminate the requirement that written consent of the adverse party or leave of court be obtained for amendments adding defendants pursuant to Tenn. Code Ann. §20-1-119 (defendant identifies third party as being wholly or partially responsible under the law of comparative fault).

RULE 23 - Class Actions

A new Advisory Commission comment clarifies that Tenn. Code Ann. §27-1-125 gives the Court of Appeals discretion to permit an appeal of a trial court's grant or denial of class action certification. Permission from the trial court is unnecessary.

RULE 56 – Summary Judgment

Previously, Rule 56.04 required a trial judge “upon request” to state the legal grounds for granting summary judgment. The amendment extends that principle to a denial of summary judgment. The amendment also deletes the words “upon request”. As a result, these grounds should always be contained in an Order disposing of a motion for summary judgment.

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 1 – Scope and Definitions

The Advisory Commission comments are self-explanatory:

“The comments to Rule 5 cross-reference the time for setting the preliminary hearing to the time computation provisions of Rule 45. However, Rule 45 does not explicitly apply to general sessions courts by its omission from Rule 1. The 2007 amendment to Rule 1(b)(9) corrects this omission but only concerning the time for setting, and process for continuing, the preliminary hearing once set. There is no intent to impact the requirements of Rule 5(a)(1) dictating that, with certain exceptions, an arrested person must be “taken without unnecessary delay before the nearest appropriate magistrate.” As a result of the 2007 amendment adopting a new (b)(9), the then-existing (b)(9) was renumbered as (b)(10).

The amendment to Rule 1(e)(3) adds “judicial commissioners” to the definition of a magistrate. This alteration makes the rule appropriately consistent with Tenn. Code Ann. §40-5-102 as it relates to courts which exercise jurisdiction at the initial stages of the criminal process as Rules 4 and 5 contemplate.”

RULE 4 – Arrest Warrant or Summons on a Complaint

A new Advisory Commission comment has been added:

“Tenn. Code Ann. §§40-6-205 and 40-6-215 require that a summons be issued instead of a warrant in certain circumstances.”

RULE 5 – Initial Appearance before Magistrate

Tenn. Code Ann. §40-1-109 requires a written guilty plea for misdemeanors. The amendment to subsection (c) conforms the rule to the statute.

RULE 11 - Pleas

Tenn. Code Ann. §40-1-109 requires a written guilty plea for misdemeanors. The amendment to subsection (e) conforms the rule to the statute but expands the concept so that all guilty or nolo contendere pleas are written.

TENNESSEE RULES OF APPELLATE PROCEDURE

RULE 5 – Appeal as of Right: Service of Notice of Appeal; Docketing the Appeal

Subsection (a) has been amended to add the following new language after the second sentence:

“With the notice of appeal, the trial court clerk shall also serve on the clerk of the appellate court either an appeal bond or an affidavit of indigency or a notice of the appellant’s failure to file either an appeal bond or affidavit.”

This amendment is intended to ensure that appellants timely file their appeal bond with the notice of appeal. Failure to do so will result in the trial court clerk notifying the appellate court clerk that no appeal bond has been filed so that action can be taken to dismiss the appeal under Rule 6(a) prior to the filing of the record.

RULE 9 – Interlocutory Appeal by Permission from the Trial Court

The following Advisory Commission comment has been added to the existing rule:

“When the intermediate court *grants* an interlocutory appeal under Rule 9, an appeal of the final decision of the intermediate court to the Supreme Court is governed by Rule 11. Accordingly, a party has 60 days from the date of the intermediate court’s judgment in the interlocutory appeal to file an application for permission to appeal under Rule 11. Note, however, that when the intermediate court *denies* an interlocutory appeal, Rule 9(c) provides that an application for permission to appeal to the Supreme Court must be filed within 30 days of the intermediate court’s order denying the interlocutory appeal.”

RULE 24 – Content and Preparation of the Record

A transcript or statement of the evidence must be filed with the trial court clerk within 60 days after the filing of the notice of appeal unless extended by the court. The period was formerly 90 days.

RULE 31 – Brief and Oral Argument of an Amicus Curiae

A new subdivision (d) has been added to provide a procedure for assessing court costs against an amicus curiae:

“(d) Costs of Amicus Curiae Filing –The court in its discretion may assess the costs of filing the motion for leave to file an amicus curiae brief and all related filings against the amicus curiae, to be paid to the Appellate Court Clerk at the time of entry of the order granting or denying the motion.”

TENNESSEE RULES OF JUVENILE PROCEDURE

RULE 2 – Definitions

The Advisory Commission comment is self-explanatory:

“The amendment clarifies that a guardian ad litem in juvenile court must be an attorney. This definition is consistent with the definition of a guardian ad litem pursuant to Tennessee Supreme Court Rule 40 in child abuse, neglect and dependency cases and Tenn. Code Ann. §34-1-107 in guardianship cases.”

RULE 6 – Time Limits for Detention Hearings

The amendment clarifies how to calculate the time for holding a detention hearing for delinquent and unruly children. It also eliminates prior subsection (c), which is duplicated in Tenn. R. Juv. P. 16(a).

RULE 10 – Summons

The Advisory Commission comment is self-explanatory:

“Prior to the 2007 amendment, Rule 10 did not address service upon a party in a foreign country. The 2007 amendment adds section (c) (5) to state that service upon a party in a foreign country will be pursuant to Rule 4A of the Rules of Civil Procedure.”

RULE 16 – Preliminary Hearings in Dependent, Neglected and Abuse Cases

The amendment clarifies how to calculate the time for holding a preliminary hearing. The amendment also makes the Rule consistent with the corresponding statute, Tenn. Code Ann. §37-1-117

RULE 17 – Time Limits on Scheduling Adjudicatory Hearings

Subsection (b) has been amended to read as follows:

“CONTINUANCES. Upon good cause being shown, any case may be continued to a date certain as the court may direct.”

The amendment addresses the issue of continuances in juvenile cases in order to emphasize the necessity for timely hearings and to minimize the negative effect that continuances have on children achieving permanency in a timely manner. The two key changes are that continuances must be granted by a judge (parties cannot continue a case by agreement) and when a case is continued, a new date for a hearing must be set. A case cannot be continued “from time to time” as previously provided for in this rule.

The term “custody” includes children placed in detention or in the legal custody of the Department of Children’s Services or any licensed child-placing agency.

RULE 22 – Agreed Orders in Civil Matters

This Rule has been completely rewritten. The amendment changes the terminology of the rule from “Consent Decrees in Civil Matters” to “Agreed Orders in Civil Matters”. The amendment also separates the provisions regarding agreed orders in custody cases and dependency cases into two different subsections as different considerations are required for those cases. In regard to dependency cases, the amendment makes clear that the statutorily required judicial findings for children in state custody must be made even when the case is settled by an agreed order. Finally, the amendment clarifies that a modification of an agreed order may not result in a child being placed in the custody of the Department of Children’s Services without the appropriate petition having been filed.

RULE 25 – Discovery

The amendment clarifies that discovery is available in dependency, neglect and abuse cases. The amendment also specifies the juvenile proceedings that are subject to the Rules of Civil Procedure.

RULE 27 - Trial by the Court

Subsection (a) has been amended to read as follows:

“(a) CONDUCT OF HEARINGS, GENERALLY.

(1) Juvenile court hearings shall be conducted in accordance with the highest standards of courtroom conduct and deportment which shall be prescribed in writing by local rules. Unless specifically addressed in this rule, or provided for by statute or Tennessee Supreme Court Rule, proceedings, except dependent and neglected cases, shall be open to all persons who are properly concerned. In the discretion of the court, the general public may be excluded from any juvenile or paternity proceeding and only those persons having a direct interest in the case may be admitted.

(2) Proceedings in transfer cases shall be open to the public unless, upon the motion or request of one of the parties or upon the judge’s own initiative, the court, in balancing the respective interests of the parties to privacy and/or to a fair trial and the public’s interest in open judicial proceedings, determines that a proceeding, parts of the proceeding, or phases of the proceeding, should be closed. In balancing the respective interests of the parties the court shall apply the following rules:

(A) The party seeking to close the hearing shall have the burden of proof;

- (B) The juvenile court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings;
- (C) Any order of closure must be no broader than necessary to protect the determined interests of the party seeking closure;
- (D) The juvenile court must consider reasonable alternatives to closure of proceedings; and
- (E) The juvenile court must make adequate written findings to support any order of closure.

2007 Advisory Commission Comments

While there is not a specific statutory or case law definition in Tennessee of a “closed hearing,” the Commission recognizes the sensitive nature of juvenile proceedings. A suggested definition of a “closed hearing” is a hearing limited to the parties to the proceeding and to person(s) that the court finds have a direct interest in the proceeding and whose presence at the proceeding is necessary for the proceeding’s full and fair hearing. *See* T.C.A. §§36-1-111, 37-1-124, 37-10-304 and Tenn. Sup. Ct. R. 24 for specific proceedings that are closed or open to the public.”

RULE 28 – Adjudicatory Hearing

The amendment adds “abused” to the possible findings a court may make at an adjudicatory hearing. The amendment also clarifies that the appointment of counsel for an indigent person is made pursuant to Supreme Court Rule 13, which governs the appointment of counsel for indigent persons in general.

RULE 37 – Appointment of a Guardian Ad Litem for the Child

The Advisory Commission comments are self explanatory:

“The 2007 amendment conforms Rule 37 to T.C.A. §37-1-149 and Tennessee Supreme Court Rule 13, which set out the provisions for the appointment of guardians ad litem. T.C.A. §37-1-401, et. seq., is the law on mandatory child abuse reports. T.C.A. § 37-1-402 states that the purpose of this law is to protect children whose physical or mental health and welfare are adversely affected by brutality, abuse or neglect. The amendment also refers practitioners to Tennessee Supreme Court Rule 40, which provides for the responsibilities of the guardian ad litem in neglect, abuse and dependency proceedings.”

RULE 39 – Termination of Parental Rights

The amendment makes the Rule consistent with the corresponding statute, Tenn. Code Ann. §36-1-113.

TENNESSEE RULES OF EVIDENCE

RULE 501 – Privileges Recognized Only as Provided

A reference to the statutory privilege between clients and licensed marital and family therapists, licensed professional counselors or certified clinical pastoral therapists is cross referenced in an amendment to the Advisory Commission comments:

“T.C.A. §63-22-114. PROFESSIONAL COUNSELOR/MARITAL AND FAMILY THERAPIST/CLINICAL PASTORAL THERAPIST–CLIENT PRIVILEGE

The confidential relations and communications between licensed marital and family therapists, licensed professional counselors or certified clinical pastoral therapists and clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this part shall be construed to require any such privileged communication to be disclosed. However, nothing contained within this section shall be construed to prevent disclosures of confidential communications in proceedings arising under title 37, chapter 1, part 4 concerning mandatory child abuse reports.”

