

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

**IN RE: AMENDMENT TO RULE 29  
RULES OF THE SUPREME COURT OF TENNESSEE**

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**Filed April 06 , 2001**

**ORDER**

Section 20-12-127 of the Tennessee Code Annotated provides for the commencement of a civil action without giving security as required by law for costs and without the payment of litigation taxes due. To commence an action under the statute, the plaintiff must file the oath of poverty set out in the statute and an “affidavit of indigency as prescribed by court rule.” Pursuant to the statute, the Court promulgated Rule 29, Rules of the Supreme Court, adopting the “Uniform Civil Affidavit of Indigency.”

An action commenced pursuant to the pauper’s oath statute may be dismissed “[i]f it be made to appear to the court, at any time before the trial, that the allegation of poverty is probably untrue, or the cause of action frivolous or malicious[.]” Tenn. Code Ann. § 20-12-132(a). Under § 20-12-132(b), “[t]he burden shall be upon a pauper to justify the pauper’s oath,” but the pauper’s oath statutes “should be construed and administered with great liberality.” Hewell v. Cherry, 25 Tenn. App. 420, 424, 158 S.W.2d 370, 373 (1941) (quoting Heatherly v. Hill, 67 Tenn. 170, 8 Baxt. 170 (1874)).

The statutes and Rule 29 do not set out a standard for a court to apply in determining whether a case should be dismissed pursuant to § 20-12-132. A proposal to adopt such a standard was presented to the Advisory Commission on the Rules of Practice & Procedure (formerly, the Advisory Commission on the Rules of Civil & Appellate Procedure). The Advisory Commission forwarded the proposal to the Court, recommending that the Court adopt a standard within the Rules of the Supreme Court. Upon consideration of the matter, the Court concludes that a standard would promote consistency in rulings made on cases commenced pursuant to the pauper’s oath statute.

In addition to Tenn. Code Ann. § 20-12-127, there are three supplementary pauper’s oath statutes: § 20-12-128 (pertaining to actions filed by guardians), § 20-12-129 (actions filed by next friends of infants) and § 20-12-130 (actions filed by personal representatives). Because Rule 29 does not expressly apply to those statutes, we conclude that the rule also should be amended to apply to actions commenced pursuant to those statutes.

Accordingly, we amend Rule 29, Rules of the Supreme Court, as stated below.

The first paragraph of Rule 29, Rules of the Supreme Court, is hereby amended to read:

Pursuant to Tenn. Code Ann. § 20-12-127(a), any civil action may be commenced by a resident of this state without giving security as required by law for costs and without payment of litigation taxes due by filing the oath of poverty set out in the statute and by filing an affidavit of indigency as prescribed by court rule. Pursuant to Tenn. Code Ann. § 20-12-127(a)(2), the uniform civil affidavit of indigency document appended to this rule is hereby adopted and shall be used in all such civil cases. The uniform civil affidavit of indigency shall also be used in all cases commenced pursuant to Tenn. Code Ann. § 20-12-128 (pertaining to the pauper's oath in actions filed by guardians), § 20-12-129 (actions filed by next friends of infants) and § 20-12-130 (actions filed by personal representatives).

The following new paragraph is adopted as the second paragraph of Rule 29, Rules of the Supreme Court, to be inserted between the first paragraph and the uniform civil affidavit of indigency appended to the Rule:

In deciding whether a civil action commenced under a pauper's oath should be dismissed pursuant to § 20-12-132, the court shall consider the information required by the uniform civil affidavit of indigency. A person who meets the Legal Services Corporation's poverty guidelines published annually in the Code of Federal Regulations shall be presumed to be indigent for purposes of Tenn. Code Ann. § 20-12-127, § 20-12-128, § 20-12-129, and § 20-12-130. The foregoing sentence does not preclude the court from finding that a person who does not meet the Legal Services Corporation's poverty guidelines is indigent for purposes of the pauper's oath statutes.

FOR THE COURT:

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E. Riley Anderson, Chief Justice