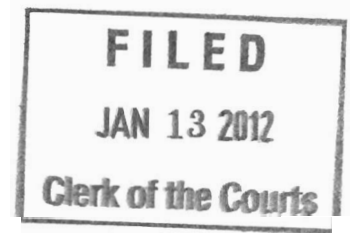


**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**IN RE:        AMENDMENTS TO TENNESSEE  
              RULES OF CIVIL PROCEDURE**



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**No. M2011-01820-SC-RL2-RL - Filed: January 13, 2012**

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**ORDER**

The Court adopts the attached amendments effective July 1, 2012, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

- RULE 5        SERVICE AND FILING OF PLEADINGS AND  
              OTHER PAPERS**
- RULE 7        PLEADINGS ALLOWED; FORM OF  
              MOTIONS**
- RULE 8        GENERAL RULES OF PLEADING**
- RULE 11       SIGNING OF PLEADINGS, MOTIONS, AND  
              OTHER PAPERS; REPRESENTATIONS TO  
              COURT; SANCTIONS**
- RULE 12       DEFENSES AND OBJECTIONS: WHEN AND  
              HOW PRESENTED: BY PLEADING OR  
              MOTION: MOTION FOR JUDGMENT ON  
              PLEADINGS**
- RULE 45.01    SUBPOENA (FOR ATTENDANCE OF  
              WITNESSES; FORM; ISSUANCE)**
- RULE 45.04    SUBPOENA (SUBPOENA FOR TAKING  
              DEPOSITIONS — PLACE OF DEPOSITIONS)**
- RULE 67       DEPOSIT IN COURT.**

The text of each amendment is set out in the attached Appendix.

IT IS SO ORDERED.

PER CURIAM

*APPENDIX*

**2012 AMENDMENTS TO THE  
TENNESSEE RULES OF CIVIL PROCEDURE**

In the attached amended rules, ~~overstriking~~ indicates deleted text  
and underlining indicates added text.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

[Amend the first paragraph of Rule 5.02 by adding the text indicated below by underlining; the other paragraphs of 5.02 and the other sections of the Rule are unchanged:]

**5.01. Service — When Required.** — \* \* \* \*

**5.02. Service — How Made.** — Whenever under these rules service is required or permitted to be made on a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service shall be made pursuant to the methods set forth in (1) or (2). If an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b), service shall be made on the self-represented person and on the attorney until such time as a notice of completion of limited scope representation has been filed. After notice of completion of limited scope representation has been filed, service upon the attorney previously providing limited scope representation shall no longer be necessary.

\* \* \* \*

Advisory Commission Comment [2012]

The first paragraph of Rule 5.02 is amended to address service of pleadings and other papers in cases in which an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 7

PLEADINGS ALLOWED; FORM OF MOTIONS

[Add new Comment below; the text of the rule is unchanged:]

Advisory Commission Comment [2012]

**7.02:** Effective July 1, 2012,, the Supreme Court adopted Tenn. Sup. Ct. R. 10B, governing motions seeking disqualification or recusal of a judge. Section 1 of Rule 10B provides a procedural framework for determining when the judge of a court of record should not preside over the case. In summary, Section 1 provides for the filing of a motion for disqualification or recusal and also provides for the judge’s prompt ruling on the motion. Section 2 of Rule 10B governs appeals from the denial of such motions, and it provides that such appeals may be effected either by filing an interlocutory appeal as of right authorized by the rule or by raising the disqualification or recusal issue in an appeal as of right at the conclusion of the case. Under Section 2.01, those two methods of appeal are “the *exclusive* methods for seeking appellate review of any issue concerning the trial court’s ruling on a motion filed pursuant to this Rule.” (Emphasis added.) As a result, “neither Tenn. R. App. P. 9 nor Tenn. R. App. P. 10 may be used to seek an interlocutory or extraordinary appeal by permission concerning the judge’s ruling on such a motion.” Tenn. Sup. Ct. R. 10B, Explanatory Comment to Section 2.

Attorneys or self-represented litigants should consult Tenn. Sup. Ct. R. 10B concerning the procedure for filing motions seeking the disqualification or recusal of a judge and for appealing from a denial of such a motion.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 8

GENERAL RULES OF PLEADING

[Amend Rule 8.02 by deleting text stricken below:]

**8.01. Claims for Relief.** — \* \* \* \*

**8.02. Defenses — Form of Denials.** — A party shall state in short and plain terms his or her defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, he or she shall so state and this will have the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. ~~Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as he or she expressly admits; but, when the pleader does so intend to controvert all its averments, he or she may do so by general denial subject to the obligations set forth in Rule 11.~~

\* \* \* \*

Advisory Commission Comment [2012]

The change to Rule 8.02 eliminates the rarely used possibility of a responsive pleading that denies all averments, including denying the identities of the parties to a suit.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 11

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS;  
REPRESENTATIONS TO COURT; SANCTIONS

[Amend Rule 11.01 by designating the existing paragraph as paragraph (a) and by adding new paragraphs (b) and (c); the other sections of the rule are unchanged:]

**11.01. Signature.** — (a) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, and Tennessee Board of Professional Responsibility number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Appearance of Counsel and Notification by Counsel Subject to Limited Scope Representation. An attorney providing limited scope representation to an otherwise unrepresented party shall file at the beginning of the representation an initial notice of limited scope representation with the court, simply stating that the representation is subject to a written limited scope representation agreement without disclosing the terms of the agreement. In addition to the initial notice of limited scope representation, when provided notice by another party, attorney or the court of a motion, pleading, discovery, hearing or other proceeding that is outside of the scope of the services provided pursuant to the limited scope representation agreement, an attorney shall promptly file a notice of limited appearance that the attorney does not represent the otherwise unrepresented

party for purposes of the motion, pleading, discovery, hearing or other proceeding. The notice of limited appearance shall simply state that the limited scope representation does not include representation for purposes of the motion, pleading, discovery, hearing or other proceeding noticed and shall not otherwise disclose the terms of the limited scope representation agreement. The notice of limited appearance shall provide the otherwise unrepresented client with the deadline(s), if any, for responding to the motion, pleading, discovery, hearing or other proceeding and shall state the date, place and time of any hearing or other proceeding. If an initial notice of limited scope representation or a notice of limited appearance is filed, service shall be made as provided in Rule 5.02.

(c) Withdrawal of Counsel Upon Completion of a Limited Scope Representation. Upon the filing of a notice of completion of limited scope representation that is accompanied by a declaration from the attorney indicating that the attorney's obligations under a limited scope representation agreement have been satisfied, and that the attorney provided the otherwise unrepresented person at least fourteen (14) days advance written notice of the filing of notice of completion of limited scope representation, the attorney shall have withdrawn from representation in the case.

**11.02. Representations to Court. — \* \* \* \***

Advisory Commission Comment [2012]

Rule 11.01 is amended to add new paragraphs (b) and (c), concerning an attorney's limited scope representation of a client. An attorney's obligations under this Rule of Civil Procedure are also governed by Tenn. Sup. Ct. R. 8, RPC 1.2(c), which states: "A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing." *See also* Tenn. Sup. Ct. R. 8, RPC 1.2(c), Comments [6] – [8]. Note,

however, that paragraph (b) of this Rule goes further than RPC 1.2(c) and requires that an agreement for limited scope representation, as it relates to a proceeding governed by this Rule, must be in writing.

Nothing in this rule prohibits an attorney providing limited scope representation from withdrawing with leave of the court prior to completion of the terms set forth in the limited scope representation agreement.



TENNESSEE RULES OF CIVIL PROCEDURE

RULE 12

DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED:  
BY PLEADING OR MOTION: MOTION FOR JUDGMENT ON PLEADINGS

[Amend 12.06 as indicated below (new text underlined; deleted text stricken) and add new Comment to 12.02 and 12.06, below:]

\* \* \* \*

**12.06. Motion to Strike.** — Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within ~~thirty~~ ninety (90) days after the service of a pleading or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

\* \* \* \*

Advisory Commission Comment [2012]

**12.02:** The defenses set forth in this Rule are affirmative defenses. They must be pleaded in accordance with Rule 8.03. *Allgood v. Gateway Health Sys.*, 309 S.W.3d 918, 925 (Tenn. Ct. App. 2009).

**12.06:** The Rule was amended to increase the amount of time to file a Rule 12.06 motion from 30 days to 90 days. The time period was extended to allow the parties additional time to explore the sufficiency of claims and defenses, including those defenses asserted under Rule 12.02, before filing a motion to strike the claim or defense for one or more of the reasons set forth in the Rule.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

[Amend Rule 45.01 by adding the underlined text below:]

**45.01. For Attendance of Witnesses — Form — Issuance.** — Every subpoena shall be issued by the clerk, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the time and place and for the party therein specified. The subpoena also must state in prominently displayed, bold-faced text: “The failure to file a motion to quash or modify within fourteen days of service of the subpoena waives all objections to the subpoena, except the right to seek the reasonable cost for producing books, papers, documents, electronically stored information, or tangible things.” The clerk shall issue a subpoena or a subpoena for the production of documentary evidence, signed but otherwise in blank, to a party requesting it, who shall fill it in before service.

\* \* \* \*

Advisory Commission Comment [2012]

Rule 45.01 is amended to ensure that persons served with subpoenas receive adequate notice, simultaneously with service, that, as provided for in Rule 45.07, the failure to file a motion to quash or modify within fourteen days of service of the subpoena will result in the waiver of the right to seek relief from the subpoena (other than the right to seek the reasonable costs for producing books, papers, documents, electronically stored information, or tangible things).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

[Delete the original Advisory Commission Comment to 45.04, as indicated below, retain the 2009 Comment to 45.04, and add the new 2012 Comment to 45.04, as set out below; the text of the rule is unchanged:]

**45.01. For Attendance of Witnesses — Form — Issuance. — \* \* \* \***

**45.04. Subpoena for Taking Depositions — Place of Deposition. —**

(1) A subpoena for taking depositions may be issued by the clerk of the court in which the action is pending. A subpoena for taking depositions may be served at any place within the state. If the subpoena commands the person to whom it is directed to produce designated books, papers, documents, electronically stored information, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26.02, the subpoena will be subject to the provisions of Rules 30.02, 37.02 and 45.02.

(2) A resident of the state may be required to give a deposition only in the county wherein the person resides or is employed or transacts his or her business in person, or at such other convenient place as is fixed by an order of the court.

**45.05. Subpoena for a Hearing of Trial — Personal Attendance. — \* \* \* \***

*Advisory Commission Comments.* ~~45.04: Tennessee has adopted the Uniform Foreign Deposition Act, Tenn. Code Ann. § 24-9-103 (repealed). This statute aids only the non-resident lawyer who wants to take a deposition in Tennessee for use elsewhere. Tennessee lawyers must look to the foreign state's statute for similar assistance. To determine whether a given state statute has adopted the Uniform Act, look under "Depositions" in the digest of the state's laws in the last volume of Martindale-Hubbell Law Directory.~~

*Advisory Commission Comments [2009]*. The amendment to Rule 45.04(1) restates settled law. A deposition subpoena, like a trial subpoena, may be served anywhere in Tennessee.

Advisory Commission Comment [2012]

**45.04:** Tennessee has adopted the Uniform Interstate Depositions and Discovery Act, Tenn. Code Ann. §§ 24-9-201, et seq. The Act aids only the lawyer who wants to take a deposition or obtain discovery in Tennessee for use elsewhere. Tennessee lawyers seeking to take a deposition or obtain discovery in a foreign jurisdiction must look to that jurisdiction's law for similar assistance.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 67

DEPOSIT IN COURT

[The text of the rule is unchanged; amend the 1998 Comment as indicated below:]

Advisory Commission Comments [1998]

The losing defendant cannot avoid ~~the 10% interest rate~~ post-judgment interest due under Tenn. Code Ann. § ~~47-14-222~~ 47-14-121 by depositing the verdict amount into the trial court clerk's office.

Advisory Commission Comment [2012]

The 1998 Comment is clarified, and an erroneous cross-reference in that Comment to “Tenn. Code Ann. § 47-14-222” is corrected to “Tenn. Code Ann. § 47-14-121.”