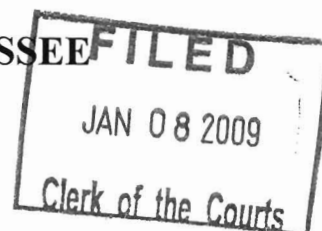


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



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

ORDER

The Court adopts the attached amendments effective July 1, 2009, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 1	SCOPE OF RULES
RULE 8	GENERAL RULES OF PLEADING
RULE 12	DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED: BY PLEADING OR MOTION: MOTIONS FOR JUDGMENT ON THE PLEADINGS
RULE 23	CLASS ACTIONS
RULE 34	PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES
RULE 45	SUBPOENA
RULE 51	INSTRUCTIONS TO JURY; OBJECTION
RULE 52	FINDINGS BY THE COURT
RULE 55	DEFAULT
RULE 60	RELIEF FROM JUDGMENTS OR ORDERS
RULE 65	INJUNCTIONS.

FOR THE COURT:


JANICE M. HOLDER
CHIEF JUSTICE

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 1

SCOPE OF RULES

[Add the following comment:]

2009 Advisory Commission Comment

A modified Rule 60 procedure to obtain relief from a general sessions court judgment is available by statute, T.C.A. § 16-15-727.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 8

GENERAL RULES OF PLEADING

[Add the following language to the end of Rule 8.04:]

- (5) Those against persons whose parental rights are sought to be terminated.

2009 Advisory Commission Comment

Even without denial of averments in an answer, allegations in a complaint must be proved in actions to terminate parental rights.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 12

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

[Amend 12.08 to read as follows:]

12.08. Waiver of Defenses.—A party waives all defenses and objections which the party does not present either by motion as hereinbefore provided, or, if the party has made no motion, in the party's answer or reply, or any amendments thereto, (provided, however, the defenses enumerated in 12.02(2), (3), (4) and (5) shall not be raised by amendment), except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the defense of lack of capacity, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15 in the light of any evidence that may have been received.

2009 Advisory Commission Comment

Rule 12.08 is amended to state the deadline for raising a defense of lack of capacity under Rule 9.01. This defense is found in Rule 12.02(8) by cross-reference to Rule 9.01. Lack of capacity can be raised as late as at the trial on the merits.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 23

CLASS ACTIONS

[Add the following new 23.08:]

23.08. Disposition of Residual Funds.—Any order entering a judgment or approving a proposed compromise of a class action certified under this rule may provide for the disbursement of residual funds. Residual funds are funds that remain after the payment of all approved: class member claims, expenses, litigation costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement or order entering a judgment that does not create residual funds.

It shall be within the discretion of the court to approve the timing and method of distribution of residual funds and to approve the recipient(s) of residual funds. A distribution of residual funds to a program or fund which serves the pro bono legal needs of Tennesseans including, but not limited to, the Tennessee Voluntary Fund for Indigent Civil Representation is permissible but not required.

Upon motion of any party to a settlement or judgment of a class action certified under this rule or upon the court's own initiative, orders may be entered after an approved settlement or judgment to address the disposition and disbursement of residual funds in a manner consistent with this rule.

2009 Advisory Commission Comment

The Tennessee Voluntary Fund for Indigent Civil Representation is established in Tenn. Code Ann. § 16-3-821.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 34

PRODUCTION OF DOCUMENTS AND THINGS
AND ENTRY UPON LAND FOR INSPECTION
AND OTHER PURPOSES

[Amend 34.03 to read as follows:]

34.03 Persons Not Parties.—As provided in Rule 45, a person not a party can be compelled to produce documents and tangible things or to permit an inspection.

2009 Advisory Commission Comment

New Rule 34.03 replaces the earlier version, which mentioned an independent action for production or entry. The subpoena duces tecum procedure in Rule 45 is more efficient.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

45.04. Subpoena for Taking Depositions—Place of Deposition

[Insert this new second sentence into 45.04(1):]

A subpoena for taking depositions may be served at any place within the state.

2009 Advisory Commission Comment

The amendment to Rule 45.04(1) restates settled law. A deposition subpoena, like a trial subpoena, may be served anywhere in Tennessee.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 51

INSTRUCTIONS TO JURY; OBJECTION

[Amend 51.04 to read as follows:]

51.04. Written Form.—If any party requests that the instructions given under Rule 51.03(2) be reduced to writing, or if the judge sua sponte elects to reduce the instructions to writing, the judge shall give the jury one or more copies of the written instructions, in their entirety, for use in the jury room during deliberations. After the deliberations are concluded, the written charge shall be returned to the judge.

[Delete paragraph of 2003 Comment which begins: “New Rule 51.04 provides that. . . .” Add following new Comment.]

2009 Advisory Commission Comment

Revised Rule 51.04 gives any party the right to require the jury charge to be reduced to writing and given to the jury. The new language incorporates T.C.A. § 20-9-501.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 52

FINDINGS BY THE COURT

[Amend the heading and first sentence of 52.01 to read as follows:]

52.01. Findings Required.—In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.

* * * *

2009 Advisory Commission Comment

The heading and first sentence of Rule 52.01 are amended. No longer must counsel request the judge to make findings of fact and conclusions of law in nonjury trials.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 55

DEFAULT

55.01 Entry.—

[Revise the two sentences after the colon to read as follows; the remainder of the existing paragraph is unchanged:]

The party entitled to a judgment by default shall apply to the court. Except for cases where service was properly made by publication, all parties against whom a default judgment is sought shall be served with a written notice of the application at least five days before the hearing on the application, regardless of whether the party has made an appearance in the action. A party served by publication is entitled to such notice only if that party has made an appearance in the action.

2009 Advisory Commission Comment

The amendment to Rule 55.01 deletes the requirement of notice of application for a default judgment where service is properly made by publication, unless an appearance has been made.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 60

RELIEF FROM JUDGMENTS OR ORDERS

[Add the following comment:]

2009 Advisory Commission Comment

A modified Rule 60 procedure to obtain relief from a general sessions court judgment is available by statute, T.C.A. § 16-15-727.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 65

INJUNCTIONS

[Amend 65.03(1) to read as follows:]

65.03. Restraining Order.--

(1) When Authorized. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and

(B) the applicant's attorney (or pro se applicant) certifies in writing efforts made to give notice and the reasons why it should not be required.

2009 Advisory Commission Comment

Rule 65.03(1) is rewritten to require in most instances notice to the adverse party before the court issues a temporary restraining order.

See Rule 65.07 on domestic relations cases.