

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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APPELLATE COURT CLERK
NASHVILLE

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

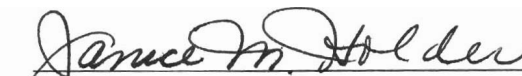
ORDER

The Court adopts the attached amendments effective July 1, 2010, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

- RULE 3 COMMENCEMENT OF ACTION;
- RULE 4 PROCESS;
- RULE 5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS;
- RULE 5B ELECTRONIC FILING, SIGNING, OR VERIFICATION;
- RULE 37 FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS;
- RULE 41 DISMISSAL OF ACTIONS;
- RULE 45 SUBPOENA;
- RULE 59 NEW TRIALS AND ALTERATION OR AMENDMENT OF JUDGMENTS.

IT IS SO ORDERED.

FOR THE COURT:


JANICE M. HOLDER
CHIEF JUSTICE

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 3

COMMENCEMENT OF ACTION

[Amend Rule 3 by adding the following new Advisory Commission Comment (the text of the rule is unchanged):]

* * * *

2010 Advisory Commission Comment

See Rule 4.01(3), cautioning against intentional delay of service of a summons for more than 30 days. If done, filing a complaint does not commence an action and does not stop the running of a statute of limitations.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 4

PROCESS

[Amend Rule 4.01(3) to read as follows:]

4.01. Summons; Issuance; By Whom Served; Sanction for Delay. –

* * * *

(3) If a plaintiff or counsel for plaintiff (including third-party plaintiffs) intentionally causes delay of prompt issuance of a summons or prompt service of a summons for more than 30 days after filing of the complaint, filing of the complaint (or third-party complaint) is ineffective.

2010 Advisory Commission Comment

Rule 4.01(3) is amended to allow intentionally delaying service of a summons for 30 days without running the risk of a statute of limitations bar.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5

SERVICE AND FILING OF PLEADINGS AND
OTHER PAPERS

[Amend Rule 5.02 to read as follows:]

5.01. * * * *

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).

(1) Service upon the attorney or upon a party shall be made by delivering to him or her a copy of the document to be served, or by mailing it to such person's last known address, or if no address is known, by leaving the copy with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at such person's office with a clerk or other person in charge thereof; or, if there is none in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Items which may be filed by facsimile transmission pursuant to Rule 5A may be served by facsimile transmission.

(2)(a) Service upon any attorney may also be made by sending him or her the document in Adobe PDF format to the attorney's email address, which shall be

promptly furnished on request. The sender shall include language in the subject line designed to alert the recipient that a document is being served under this rule. On the date that a document served under this rule is electronically sent to an attorney, the sender shall send by mail, facsimile or hand-delivery a certificate that advises that a document has been transmitted electronically. The certificate shall state the caption of the action; the trial court file number; the title of the transmitted document; the number of pages of the transmitted document (including all exhibits thereto); the sender's name, address, telephone number and electronic mail address; the electronic mail address of each recipient; and the date and time of the transmission. The certificate shall also include words to this effect: "If you did not receive this document, please contact the sender immediately to receive an electronic or physical copy of this document." The certificate shall be sent to all counsel of record.

(b) An attorney who sends a document to another attorney electronically and who is notified that it was not received must promptly furnish a copy of the document to the attorney who did not receive it.

(c) A document transmitted electronically shall be treated as a document that was mailed for purposes of computation of time under Rule 6.

(d) For good cause shown, an attorney may obtain a court order prohibiting service of documents on that attorney by electronic mail and requiring that all documents be served under subsection (1).

5.03. * * * *

2010 Advisory Commission Comment

The Commission is aware that many attorneys serve documents on one another electronically but, because the current rule does not provide electronic service is sufficient service, also send a paper copy of the document. This rule change is designed to allow attorneys to accomplish service of pleadings and other papers electronically without the need to send a physical copy.

The requirement that the sender shall include language in the subject line designed to alert the recipient that a document is being served under this rule is intended to reduce the possibility that the recipient might overlook the service of a document. Words in the subject line to the effect of “TRCP Rule 5 Service of Document in *Smith v. Jones*” are sufficient.

Adobe PDF was chosen as the format because it is required for federal court filings and virtually all attorneys have ready access to it. Of course, the parties may stipulate to the use of a different format.

The mailing or hand delivery of a certificate was included out of concern, well-founded or not, that an email transmitting a document could be lost in cyberspace. The certificate requirement puts the receiving attorney on notice that a document has been sent and, if the document was not received, will allow that attorney to initiate a process for promptly obtaining a copy of it.

The rule provides a mechanism for a court to order, for good cause shown, that electronic service of pleadings and papers not be permitted in a particular case.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5B

ELECTRONIC FILING, SIGNING, OR VERIFICATION

[Adopt this new Rule 5B:]

Any court governed by these rules may, by local rule, allow papers to be filed, signed, or verified by electronic means that comply with technological standards promulgated by the Supreme Court. Pleadings and other papers filed electronically under such local rules shall be considered the same as written papers.

2010 Advisory Commission Comment

The courts in certain counties have expressed a desire to implement an electronic filing system. This rule permits trial courts, by local rule, to adopt such systems.

Electronic filing systems have also been implemented in all of the federal district courts (with the sole exception of the United States District Court for the Northern Mariana Islands) and in a number of states. Electronic filing offers numerous advantages over traditional "paper filing," including vastly increased public access to court documents and reduction of the time and expense incurred by litigants and court personnel in filing, storing, and retrieving documents.

The Commission envisions that, in the not too distant future, all of Tennessee's courts will adopt electronic case filing systems. In order to achieve statewide uniformity, the systems utilized throughout the state must comply with technological standards promulgated by the Supreme Court. Without such uniformity, the desired ease of access to data and cost efficiencies could not be achieved.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 37

FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS

[Amend the title of Rule 37.03 to read as follows:]

* * * *

37.03. Failure to Supplement or Amend Responses or Failure to Admit. –

* * * *

2010 Advisory Commission Comment

The title of Rule 37.03 is expanded to conform to the language in the rule.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 41

DISMISSAL OF ACTIONS

[Amend Rule 41.02(2) to read as follows:]

41.02 Involuntary Dismissal – Effect Thereof. –

(1) * * * *

(2) After the plaintiff in an action tried by the court without a jury has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court grants the motion for involuntary dismissal, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment.

(3) * * * *

2010 Advisory Commission Comment

The final sentence of Rule 41.02(2) deletes the requirement of a request for written findings of fact and conclusions of law. Instead, in conformity with Rule 52.01, findings of fact and conclusions of law are required without request.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

[Amend the title of Rule 45.02 to read as follows:]

* * * *

45.02. For Production of Documents and Things or Inspection of Premises. –

* * * *

2010 Advisory Commission Comment

The title of Rule 45.02 is expanded to conform to the language in the rule.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 59

NEW TRIALS AND ALTERATION OR
AMENDMENT OF JUDGMENTS

[Amend Rule 59.01 to read as follows:]

59.01. Motions Included. – Motions to which this rule is applicable are: (1) under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) under Rule 52.02 to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under 59.07 for a new trial; or (4) under Rule 59.04 to alter or amend the judgment. These motions are the only motions contemplated in these rules for extending the time for taking steps in the regular appellate process. Motions to reconsider any of these motions are not authorized and will not operate to extend the time for appellate proceedings.

59.02. * * * *

2010 Advisory Commission Comment

The amendment merely corrects an erroneous cross-reference contained in Tenn. R. Civ. P. 59.01.