

**LOCAL RULES OF CIVIL PRACTICE
CHANCERY AND CIRCUIT COURTS OF TENNESSEE
ELEVENTH JUDICIAL DISTRICT OF TENNESSEE
HAMILTON COUNTY, TENNESSEE**

RULE 1. EFFECTIVE DATE AND CITATION OF RULES

1.01 Effective Date

These Rules shall take effect on September 1, 2002.

1.02 Adoption of Civil Rules

These rules shall be the Local Rules of the Chancery and Circuit Courts for the Eleventh Judicial District of the State of Tennessee, and, except as readopted herein, all former rules of local civil practice in the Chancery and Circuit Courts are rescinded.

1.03 Rules Suspension

The Court holds the discretion to suspend any of these rules.

1.04 Citation

These Local Rules of Civil Practice may be cited as LRCP.

RULE 2. DEFINITIONS

2.01 As used herein, the following terms shall have the following meanings:

- (a) "Court" shall mean the Chancery and Circuit Courts of the Eleventh Judicial District of the State of Tennessee.
- (b) "Clerk" shall mean the Clerk and Master of the Chancery Court and the Clerk of the Circuit Court.
- (c) "Judge" shall mean either the Chancellor of Chancery Court or the Judge of the Circuit Court.

RULE 3. PLEADINGS AND OTHER PAPERS

3.01 Cost Bonds

- (a) Cost Bonds are required for a surety of a party filing a pleading seeking affirmative relief.
- (b) Cost Bonds shall not be placed on the summons. Cost Bonds shall be filed either by attaching a cost bond to the pleading requiring a cost bond or filing a separate paper entitled Cost Bond.
- (c) The Cost Bond shall be in the following form and executed by a surety.

COST BOND

I hereby acknowledge and bind myself for the prosecution of this action and payment of all non-discretionary costs in this

Court, which may at any time be adjudged against the plaintiff/petitioner in the event the plaintiff/petitioner shall not pay them.

Witness My Hand this ____ day of _____, 20__.

SURETY

ADDRESS

TELEPHONE NUMBER

(d) Surety on a bond for costs shall not be released from the obligation as surety until there is provision for a substitute surety.

3.02 Civil Cover Sheet

A completed Civil Case Cover Sheet, on a form available from the Clerk, shall accompany every pleading seeking affirmative relief. The filing of an answer or other initial responsive pleading by a defendant shall be accompanied by a Civil Case Cover Sheet with the statistical information completed in parts VI and VIII. Civil Case Cover Sheets are required solely for administrative purposes, and matters appearing only on the cover sheet have no legal effect in the action.

3.03 Paper

Pleadings and other papers filed with the Court shall be on letter size (8 ½ by 11) paper.

3.04 Counsel or pro se Litigant Identity

Pleadings and other papers shall bear the typed or printed name, Board of Professional Responsibility number (BPR No.), address, facsimile telephone number (if available) and telephone number of the filing attorney or pro se litigant. [See Rule 11.01 TRCP wherein the BPR number is required along with the attorney’s signature.]

3.05 Extraordinary Relief

Complaints for writs of certiorari, writs of attachment, restraining orders or other extraordinary relief shall be first filed with the Clerk and shall be verified or accompanied by sworn affidavit setting forth the facts justifying the relief sought.

3.06 Original Signatures

Papers to be filed or lodged that require the signature of a party, the party’s counsel, or other individual or entity shall contain the original signature.

3.07 Ex Parte Approvals

Petitions for the approval of workers’ compensation claims, minors' claims, name changes and other similar matters must be filed with the Clerk before being presented to the Judge for approval.

RULE 4. SERVICE OF PAPERS AND COURT FILES

4.01 Service

- (a) After suit is commenced, all papers required to be served on a party by any person except the Clerk must contain a certificate of service, which must recite the date of service and the name and address of each person served.
- (b) In *ex parte* matters, copies of motions and other papers are to be mailed to interested parties. Certificates of Service must reflect those to whom copies are sent.

4.02 Court Record

All papers, including pleadings, motions, briefs, and proposed judgments and orders shall be filed or lodged with the Clerk as required in these rules. Papers should not be mailed to or left with the Judge.

4.03 Facsimile Copies

Facsimile transmittal papers or pleadings may be filed or lodged when permitted by the Tennessee Rules of Civil.

4.04 Forms

Various forms are required for filing or lodging by these rules. Parties and their attorneys may use the actual forms provided by the Clerk or forms that contain all the information required by the Clerk's form and comply with the format of the Clerk's form.

4.05 Court Files

All files and records of the court shall at all times be under the custody and control of the Clerk. Files may not be withdrawn without permission of the Clerk and the Judge.

RULE 5. ORDERS AND COSTS

5.01 Preparation

- (a) In every case or motion disposed of by an oral ruling of the Court, the Order or Judgment is to be drawn by counsel for the prevailing party unless otherwise ordered.
- (b) Unless the Court allows a greater time, the Order or Judgment is to be prepared and forwarded to adversary counsel within five (5) days of the hearing or trial. *Ex parte* orders are to be lodged with the Clerk within five (5) days of the hearing. Except for agreed orders signed by all counsel or *pro se* parties, orders shall not be lodged granting or denying any relief prior to the Court passing on the issue.
- (c) The Court prepares orders on Chancery Court Motions setting cases for trial. Counsel prepares orders on Motions setting Circuit Court cases for trial and all other Orders on Chancery and Circuit Court Motions.
- (d) Failure of counsel to prepare and lodge Orders with the Court within fourteen (14) days of the announcement of an agreement or the ruling of the Court may result in dismissal of all Motions or Petitions seeking the relief ordered by the Court

5.02 Approval

- (a) Unless waived by the Court, all orders proposed to be entered shall be submitted to all parties or their counsel for approval. It is incumbent upon counsel to promptly review a proposed order, and approve same, or to notify adversary of specific objections. Counsel are to approve the order if it accurately reflects the ruling of

the Court, regardless of whether they concur with it or not.

- (b) In matters involving five (5) or more parties, the Court will, upon application and proper circumstances, allow orders to be filed in accordance with LRCP 5.03.

5.03 Proposed Orders

- (a) Unless waived by the Court, no proposed order may be lodged with the Clerk until it has been submitted to all other parties or their counsel and they have refused to approve it or they have failed to respond within a reasonable period of time. For the purposes of this Rule, eight (8) business days after mailing shall be a reasonable period of time. Orders lodged under this rule shall bear the word “PROPOSED” at the top of the Order.
- (b) Adverse parties having legitimate objections to the proposed order shall file objections to the proposed order setting out a specific objection within five (5) business days after lodging of the proposed order.
- (c) Nine (9) business days after the lodging of the proposed order under this rule, the Clerk shall deliver to the Judge all proposed orders with exceptions or objections for action.

5.04 Taxing of Costs

- (a) All final orders shall provide for the assessment of court costs.
- (b) Orders for payment of costs shall be rendered jointly against the party and the party’s sureties, if any.

5.05 Re-Taxing of Costs

For good cause, the Clerk may move the Court for a re-taxing of court costs.

RULE 6. DISCOVERY

6.01 Discovery Not Filed

No discovery material shall be filed with the Clerk except as otherwise provided in these or other applicable Rules. When a new party is added to the lawsuit subsequent to commencement of the suit, copies of existing discovery shall be given to that party upon request at the cost of the added party.

6.02 Interrogatories

Written interrogatories and sub-questions shall not exceed twenty-five (25) in number without the express permission of the Court.

RULE 7. MOTIONS

7.01 Authority

All motions shall be in writing and cite the authority for the relief sought, whether by rule, statute or otherwise. Motions not citing proper authority or citing only Rule 7.02 of the Tennessee Rules of Civil Procedure shall be stricken.

7.02 Call

- (a) In Circuit Court motions filed by 4:00 p.m. on Thursday will be heard the second following Monday. Motions may be heard at other times only with the consent of the Judge.

(b) In Chancery Court motions will be called at the Court's first regularly scheduled motion day occurring five (5) business days after the filing of the motion. Motions may be heard at other times only with the consent of the Judge.

7.03 Circuit Court Motions

Motions in Circuit Court will be called every Monday other than holidays, commencing in Division I at 9:00 a.m.

7.04 Chancery Court Motions

(a) Motions in Chancery Court, Part 1, will be called at 8:00 a.m. on the first (1st) and third (3rd) Mondays of each month. Motions in Chancery Court, Part 2, will be called at 8:00 a.m. on the second (2nd) and fourth (4th) Mondays of each month. When a motion Monday falls on a holiday, motions will be heard on the next business day.

(b) Notice of hearing date and time of a Chancery Motion shall be placed on the Motion.

7.05 Motion Exhibits

The underlying document(s) that are the subject of the motion shall be an exhibit(s) to the motion.

7.06 Response to Motions

Responses to Motions are allowed but not mandatory except that responses are required to Motions citing Rules 12, 26 through 37 and 56 of the Tennessee Rules of Civil Procedure. Failure to file a response by 4:00 p.m. two (2) business days preceding the date the motion is to be called will result in the granting of the motion.

7.07 Brief Requirement

A memorandum of law shall accompany every motion or response which may require the resolution of an issue of law. Any motion, response, brief or memorandum of law that makes reference to a transcript or deposition shall make reference, and attach, the relevant page(s) of the transcript involved. Briefs containing cites to foreign cases must attach a copy of the case or the Court can disregard the authority.

7.08 Dispositive Motions

Motions for Summary Judgment, for Judgment on the Pleadings or for Dismissal must be filed at least 60 days before trial and replies must be filed at least 30 days before trial. Oral argument of dispositive motions is waived unless requested by a party or the Court. Only the relevant portions of the discovery materials used to support the motion shall be filed.

7.09 Failure to Appear; Late Appearance

Unless otherwise excused, failure to appear shall result in a Motion being stricken or adjudicated as the Court orders. Counsel shall notify the Judge's office prior to the time of the hearing of a late arrival for a Motion or attendance in another Court, or for a continuance of the motion.

7.10 Priorities

Motions requiring oral testimony will be heard after motions not requiring such evidence. Non-jury matters may be heard on Motion Day, but motions in any Court take priority over non-jury matters

RULE 8. CASE MANAGEMENT

8.01 Case Assignment and Reassignment

All cases in Circuit Court are assigned sequentially by Division. Cases in Chancery Court are assigned sequentially by Part, except as provided in LRCP 15.01. Any case previously filed and dismissed and then refiled will be assigned to the same Part or Division to which the case had been assigned previously.

(a) This section requires that in situations in which an order of protection and a divorce both are pending, the division or part of the court having the first filed case will assume jurisdiction over both the order of protection and the divorce.¹

8.02 Conferences and Uncontested Matters

Conferences, default hearings and other uncontested matters shall be set by appointment with the Judge's office.

8.03 Trial Docket

Unless otherwise ordered, trials and other contested evidentiary matters normally will be assigned for hearing at 9:30 a.m. in Chancery Court and 9:00 a.m. in Circuit Court. Attorneys and parties shall be prompt for all sessions. Cases set for trial by Order are subject to dismissal upon the failure of plaintiff to appear or entry of judgment upon failure of defendant to appear unless an Order continuing, settling, or dismissing the matter has been filed prior to the morning of trial.

8.04 Setting of Cases

Cases in Division II of Circuit Court will be set on the second Wednesday of the month in the months of April, July and November. Cases in Divisions I, III and IV of Circuit Court and Parts 1 and 2 of Chancery Court will be set by motion, agreed order or action of the Court.

8.05 Dismissal of Dormant Cases

All cases where no action has been taken may be dismissed by the Court at the expiration of two hundred and seventy (270) days from the from the date of the last action taken. Thirty (30) days prior to a dismissal, the Clerk or Judge shall notify counsel or post a Procedural Steps List containing the name and docket number of each case to be dismissed. The Procedural Steps List shall be prominently posted in the Clerk's office and on the web site (<http://www.hamiltontn.gov/courts>).

8.06 Dismissal Orders

The Clerk shall mail copies of each order dismissing a case for want of prosecution to counsel of record and unrepresented parties, whose address can be ascertained from information in the file.

8.07 Certifying Cases Ready When Set

When a case is set by agreement or when a case is set by motion without objection to having it set, all counsel are certifying they are available for trial and that the case is in all respects ready for trial.

8.08 Trial Preparation Deadline

When a party objects to having a case set because trial preparation is not complete, the Court may issue a scheduling order which will establish deadlines for completing trial preparation and set a trial date.

¹ Revision 2005.01.21, Book and Page: Chancery 1E.05.01.449 and 2E.05.01.500; Circuit I-72/953, II-85/703, III-73/853, IV-74/987.

8.09 Cases Not Reached

In the event a case ready for trial on the day assigned is not reached on that day, the case will be reset for trial on the first available trial date.

8.10 Withdrawing Attorneys

Once counsel has made a general appearance, counsel may not withdraw except for good cause, by motion and order of Court. Counsel who are surety for costs remain surety despite withdrawal until a successor surety is obtained or the plaintiff posts a \$500 cash bond or corporate surety bond unless the plaintiff is permitted to proceed under a pauper's oath.

RULE 9. TRIAL

9.01 Record of Proceedings

It is the responsibility of litigants to arrange for court reporters to record the proceedings of the Court.

9.02 Pretrial Schedule

- (b) At least ten (10) days prior to trial, each party shall file and serve by facsimile or by hand: 1) a Witness List; 2) an Exhibit List identifying all exhibits to be used at trial ; and 3) a Trial Brief where there are contested issues of law. Within five (5) days of the receipt of an Exhibit List, the recipient of the Exhibit List shall by fax or hand serve any objections to authenticity of any exhibit or such objection shall be deemed waived. All other objections shall state each specific ground for objection and shall be served and filed at least five (5) days before trial. The Witness List shall include the names, addresses, and phone numbers (if known) of all witnesses expected to be called. Witnesses and exhibits not identified in compliance with this rule shall not be utilized at trial.
- (c) A Trial Brief shall be a concise statement of the issues and law supported by appropriate citations. If a citation is to a decision not fully reported in Southwest Reporter, Tennessee Decisions, a copy of the entire text of the decision shall be attached to the brief.
- (d) If the parties anticipate the use of more than a total of fifty (50) trial exhibits, the parties are to meet prior to trial and premark all trial exhibits in sequential order without designation as to plaintiff or defendant. If there is a dispute as to admissibility, the exhibit shall be marked for identification only. Otherwise, the exhibit is deemed admitted. A list of the marked exhibits shall be filed not later than the morning of trial.

9.03 Exhibit Control

All trial exhibits shall be accounted for and placed in the custody of the court reporter unless otherwise directed by the Court.

9.04 Exhibit Disposal

After final determination of any case, the parties shall have forty-five (45) days after the entry of the final judgment to withdraw exhibits and depositions if no appeal is filed. The court reporter or Clerk may destroy or dispose of exhibits and depositions not withdrawn from their possession.

9.05 Jury Trials

- (a) When a jury is demanded pursuant to Rule 38 of the Tennessee Rules of Civil Procedure, the words "JURY DEMAND" shall be typewritten in capital letters in the caption of the case above the space for the case

number on the document demanding a jury and on all subsequent documents filed in the case.

- (b) In each case appealed to Circuit Court from the General Sessions Court wherein a jury is desired, a written demand shall be filed with the Circuit Clerk, with notice to all parties, within ten (10) days after the papers from the General Sessions Court are filed with the Circuit Clerk.
- (c) Not less than twenty (20) days before trial, the parties shall submit to the Court in writing any contested issues of law to be addressed by the Jury or the Court together with citations of authority and/or briefs. This Rule shall not preclude the parties from filing jury requests concerning contested issues arising during the trial.
- (d) Not less than ten (10) days before trial the party first demanding a jury shall file a proposed jury charge on the issues to be determined by the jury not addressed by the Tennessee Pattern Instructions and proposed jury verdict forms, and the other parties shall, not less than five (5) days before trial, file any proposed changes, additions, or deletions to said proposals.

9.06 Settlement

If a case is set for trial and the parties reach a settlement, the parties shall give immediate notice of the settlement to the Court. In the event that notice is not given, economic sanctions may be imposed.

9.07 Decorum

- (a) Attire. Counsel, litigants, witnesses, court reporters, and court officers shall not dress in a manner which detracts from proper decorum in the court.
- (b) Bar Space. The space within the bar in the courtroom is reserved for attorneys, legal assistants and for litigants actually engaged in trial. All other persons will be seated outside the bar unless the Court gives consent to the contrary.
- (c) Bench Conferences. Bench conferences should be requested only when absolutely necessary in aid of a fair trial. The conferences shall be conducted in a professional manner.
- (d) Counsel, Litigator and Spectator Conduct. When Court is in session, all persons present shall be seated at all times except when addressing the Court and shall not talk, laugh, or otherwise make any noise. All cell phones and beepers must be turned off.
- (e) Forbidden Conduct. Counsel and witnesses are prohibited from using curse or swear words even when quoting others. When quoting others, counsel and witnesses shall omit any offensive word and state only the first letter of the word. The Court's permission must first be obtained before any deviation from this rule.
- (f) Juror Contact. No attorney, party, witness, or any other person interested in a case being tried, shall engage in any conversation with any juror until such juror's service for the term has ended.

9.08 Continuances

Cases may be continued only by leave of the Court by written order. Failure to complete discovery or to prepare for trial shall not be adequate grounds for a continuance. Cases referred to the Master may be continued only by leave of the Master upon oral motion by conference telephone by the parties with the Master.

RULE 10. DOMESTIC RELATIONS

10.01 Attorney Fees

Factors to be considered by the Court in awarding attorney fees shall include the attorney's contract with the client, the financial resources of the respective parties, good faith efforts by the respective parties to resolve the case

consistent with existing law, all other factors set forth in Disciplinary Rule 2_106 of the Code of Professional Responsibility [Tenn. Sup. Ct. R. 8.] and any other appropriate authority.

10.02 Financial Statement

- (a) In all domestic relations cases where support is an issue, both parties shall file and serve on adversary or adversary counsel at least ten (10) days before trial, on a form provided by the Clerk, a sworn statement as to all income being received as of the time said form is executed. An affiant shall compile and file a sworn statement as to expenses only if: i) alimony is sought, or resisted; ii) a deviation from child support guidelines is sought; or iii) it is contended the income statement is not representative of future income. Upon the failure of a party to file an income statement where child support or alimony is an issue, the other party shall file a sworn good faith estimate of the income of the defaulting party.
- (b) In all divorce cases, both parties shall prepare, file, and serve on adversary or adversary counsel at least ten (10) days before trial financial statements setting out a list of all assets, date acquired, purchase price, encumbrance, if any, and the present market value, and a list of all liabilities, date incurred, total amount owed, and amount of monthly payments thereon. The list of assets and liabilities shall be inclusive of assets and liabilities of the parties jointly and severally, and specify whether acquired before or during the marriage, and shall be verified under oath. The parties shall also file not less than ten (10) days before trial a proposed division of marital property, if such is in dispute, which listing shall include any dispute as to separate property, jointly executed agreed stipulations and proposed division of property and liabilities.
- (c) All sworn income and expense statements and financial statements required by this section must include the Social Security Number or Taxpayer Identification Number of the party filing the document.
- (d) Failure to file the required statements as provided herein shall result in the case being dismissed or passed or default judgment entered against the non-complying party or other appropriate sanctions in the Court's discretion.

10.03 Pendente Lite Hearing

- (a) Child Support. *Pendente lite* hearings for child support will be heard only on motion accompanied by a sworn good faith estimate of the income of the non-custodial party; if the non-custodial party contests the amount alleged, he or she is to file and have delivered to plaintiff's counsel a sworn income statement within five (5) business days after receipt of the motion from the custodial party.
- (b) Alimony. *Pendente lite* hearings for alimony will be heard only on motion accompanied by a sworn income and expense statement filed by the movant. The non-moving party contesting alimony is to file within five (5) business days after receipt of the motion a sworn income and expense statement.

10.04 Default Divorce Setting; Failure to Appear

When the defendant fails to answer within the time required by law, a motion for default and to set shall be filed. A default judgment specifying the date and time for the hearing must be entered at least ten (10) days before the hearing. Any uncontested divorce passed for good cause must be passed to a day certain by order with at least ten (10) days notice to the other party. Failure of the plaintiff or plaintiff's counsel to appear, ready for trial, will result in the case being passed or dismissed, in the discretion of the Court.

10.05 Waiting Period for Divorce

Agreed upon divorces upon fault or stipulation may be set at any time agreed to by the Court more than thirty (30) days after service of process, and the proposed Final Order of Divorce must be signed by both parties unless a Marital Dissolution Agreement or Property Settlement Agreement executed by both parties is submitted.

10.06 Divorce Education and Parenting/Mediation

Counsel shall comply with all statutes regarding parenting plans, education, and mediation. Both parents shall attend a parent education seminar of at least four hours duration and file a certificate of attendance within sixty (60) days of the filing of the complaint.

RULE 11. FUNDS

11.01 Funds Paid Into Court

- (a) No litigant funds shall be paid into Court without the Court's order pursuant to T.C.A. §18-5-106. Funds paid into court are not invested for the benefit of the litigants unless the Court so directs.
- (b) All such orders shall contain the full legal name, address, Social Security Number, or Taxpayer Identification Number, if any, of each person or entity whose funds are to be invested. In Orders pertaining to minors, the date of birth and the date the minor becomes eighteen (18) years of age shall be stated in the order directing investments.
- (c) It is the duty of the attorney or litigant seeking investment of funds to specifically call to the attention of the Clerk that the funds are to be invested.

11.02 Funds Paid Out of Court

Persons receiving funds paid out of court by the Clerk must furnish their Social Security Number or Taxpayer Identification Number before funds will be released.

RULE 12. MASTERS

12.01 Reference to Master; Counsel Duty

At the time a case is set for trial, it shall be the duty of counsel to inform the Court of any issues which may be the proper subject of a reference to a Master (Examples: accounting, damages, validity and priority of liens, etc.).

12.02 Notice To Take Proof

Following the entry of an Order of Reference, the Master will notify all parties involved of a hearing date to take proof on the matter referred. The Master, if necessary, may schedule a meeting with counsel in order to determine the procedure on the reference.

12.03 Continuances

Hearings may not be continued by agreement and may be continued only by leave of the Master. Hearings will not be continued except for good cause which shall be brought to the attention of the Master as soon as practicable before the hearing date. Requests for continuances shall be made by telephone conference call by all interested parties.

12.04 Witness Absence

Absence of a witness will not be grounds for a continuance unless the witness has been subpoenaed in accordance with the requirements of these rules and *Tennessee Rules of Civil Procedure*.

12.05 Evidence Exchange

Not later than ten (10) days prior to the hearing, parties shall exchange exhibits upon which they wish to rely at the hearing.

12.06 Court Reporter or Stipulation

The parties shall either i) stipulate in writing prior to the hearing that the Master's findings of fact shall be final, or ii) employ a court reporter to attend the hearing and prepare a transcript of the preceding which transcript shall be filed with the Clerk for preparation of the Master's Report and filing pursuant to Rule 53.04(1) of the Tennessee Rules of Civil Procedure. The Master for good cause may waive the requirement for the preparation and filing of the transcript prior to preparation of the Master's Report.

12.07 Master's Report Objections

- (a) Application to the Court for action upon a Master's Report or upon objections thereto shall be made by motion within ten (10) days of the service of the Master's Report.
- (b) Except in matters stipulated pursuant to 12.06 LRCP, objections shall be supported by a transcript of proceedings before the Master and shall state specifically the grounds for the objections by specific references to the transcript.
- (c) If no motion for action upon a Master's Report is made within the prescribed period, the Master's Report shall become final, and the Court without further action of the parties may enter an order of confirmation.
- (d) Orders prepared by counsel, which confirm a Master's Report, shall be in proper form, embodying the recommended findings or awards in the report, such that the order shall stand-alone without necessary reference to the report.

RULE 13. ADOPTIONS

13.01 Adoption Surrenders

- (a) Surrenders are normally scheduled as are *ex parte* matters.
- (b) In cases pending in Chancery Court all surrender documents are to be reviewed by the Clerk's office prior to the time surrender is to take place before the Court.
- (c) Counsel are to inform the Court's secretary if there is more than one child to be surrendered, or if circumstances exist which will require a more lengthy hearing than usual.
- (d) There shall be a separate surrender for each child.

13.02 Petitions for Adoptions

A separate verified petition must be filed for each adoptive child. Separate docket numbers will be assigned to each petition, and there shall be a separate final Order in each case. Cases involving the same petitioner shall be assigned to the same judge.

13.03 Adoptions - Waivers

The law allows the Court to waive certain steps, procedures and time requirements under appropriate circumstances. Counsel or parties are not to assume that the Court will waive requirements or times in every instance. One seeking a waiver is to state in the motion or proposed order the statutory section allowing the same and why the circumstances justify the waiver, reduction or elimination of a procedure or provision of the law otherwise applicable.

13.04 Adoptions - Final Hearings - Minors

- (a) In a non-related or non-stepparent adoption, the Court is unlikely to approve a reduction in the six month waiting period after filing the petition unless the child has lived in the home for more than one year and there are compelling reasons. T.C.A. § 36-1-119(a).
- (b) In an adoption where the child is related to the petitioners, or the adoption is by a stepparent, the Court will normally waive or shorten the six month waiting period after filing if the child has lived in the home for more than one year.
- (c) In no event is a final hearing to be scheduled less than ten (10) days after the petition is filed.
- (d) The child and the parents shall appear before the Court for the final hearing unless specifically excused by the Court. Appropriate dress is required.

13.05 Terminations

Lawsuits to terminate parental rights shall be handled before the adoption is set. Parents whose rights are subject to termination may be eligible for an appointed attorney. Counsel shall advise the Court if either natural parent is incarcerated.

13.06 Final Report on Adoption

The final court report in response to the Court’s Order of Reference is to bring the status of the prospective adoptive home and the child up to date immediately prior to finalization of the adoption. (T.C.A. § 36-1-102(20)) It is to be filed with the Clerk at least three (3) days prior to the final hearing.

RULE 14. GIFTS AND GRATUITIES

14.01 Court Officers and Deputy Sheriffs

No attorney or party shall offer, nor shall any court officer or deputy sheriff accept, any money or other thing of value for the execution or service of any process issuing from this Court.

14.02 Court Personnel

No attorney, litigant, bank, title insurance company, or any other person regularly doing business in or with the office of the Clerk shall offer, nor shall any Clerk Personnel receive, any gifts, money or other thing of value except the fees, taxes and costs authorized by statute, rule, or order.

ADDITIONAL RULES APPLICABLE IN CHANCERY COURT

RULE 15. GENERAL MATTERS

15.01 Case Assignment

All matters pertaining to Guardians, Conservators, Mental Health Appointments and Adoptions, when filed in Chancery Court, are assigned to Part 1. All probate and lawsuits involving the construction of a trust are assigned to Part 2 of the Chancery Court.

15.02 Motion Notice

Notice of hearing date and time of a Chancery Motion shall be placed on the Motion.

RULE 16. ADMINISTRATIVE REVIEW

16.01 Brief Required

Briefs must be lodged in all cases heard by the Court upon the record from an administrative tribunal or agency. If the petitioner fails to lodge a brief within the time provided by this rule, the action may be dismissed and the administrative action affirmed. If the defendant has not lodged a brief within the time provided in this rule, the Court may decide the case on the record and the petitioner's brief.

16.02 Brief Lodging & Service

Petitioner shall lodge and serve a brief within twenty (20) days after the record is filed. Defendant must lodge and serve a brief within fifteen (15) days after lodging of the petitioner's brief. Upon application the Court may enlarge the time for lodging briefs.

16.03 Oral Argument

- (a) Hearings for oral argument may be scheduled by motion or agreement of counsel and approval of the Court.
- (b) Thirty (30) days after the filing of the record with the clerk, the petitioner shall file, or any party may file, a Motion asking the Court to set the matter for determination.

RULE 17. GUARDIANSHIP AND CONSERVATORSHIP

17.01 Petitions

A separate petition must be filed for each respondent. Separate docket numbers will be assigned to each petition and there shall be a separate Final Order in each case.

17.02 Conservatorships

The petition shall be verified and shall contain the information required by statute and these Rules. Petitioner shall list the names and addresses of all persons to whom notice is required. Notice shall be given by the Clerk. Service of process shall be provided by an authorized officer. A verified statement for a physician or psychologist in accordance with T.C.A. § 34-3-105 shall be filed, if available, with the Petition. If not then available, the certificate must be filed before or at the hearing.

17.03 Guardianships

The petition shall be verified and shall contain the information required by statute and these Rules. Notice shall be provided to all interested persons, and service upon the respondent shall be in accordance with law.

17.04 Guardian & Conservator Orders Submitted with Petition

Orders appointing or waiving a guardian *ad litem*, setting a hearing date and providing for the duties of the guardian *ad litem* shall be submitted with each petition for conservatorship or guardianship. Examples of such orders may be obtained from the Clerk's office.

17.05 Guardian *ad litem*

- (a) The Court will appoint a licensed attorney as the Guardian *ad litem* upon the filing of a petition to appoint a conservator or guardian; provided, however, the Court may waive the appointment of a Guardian *ad litem* if good cause is shown
- (b) The Court may appoint a Guardian *ad litem* in matters involving the sale, improvement, or mortgage of any

real property in which a minor or other person under disability has an interest; in matters involving the sale or disposition of ward's personal property; in matters involving possible impropriety by a fiduciary; in matters concerning unauthorized encroachments or questionable management of a ward's assets under guardianships or conservatorships; in any matter the Court believes to be in the best interest of a minor, incompetent, absentee or interested party or to further the administration of justice.

- (c) The Guardian *ad litem* shall conduct an inquiry and file a report with the Court at least three (3) days prior to the hearing. The report shall contain the information required by statute and these Rules and such additional information the Court may require or the Guardian *ad litem* deems necessary. Reports are to be brief and to the point unless the complexities of the case require greater detail.

17.06 Orders Appointing Guardian/Conservator

All orders appointing guardian or conservator shall contain the information required by appropriate statute and these Rules. The order shall provide the ward's full name, date of birth and Social Security number. The order shall also provide that an inventory within sixty (60) days and an annual accounting are required or waived with a requirement for an annual report. Forms that provide for most of the requirements can be obtained from the Clerk's office but must be modified to meet the facts of each individual case. Orders appointing a representative shall adjudge the Clerk's cost.

17.07 Subsequent Orders

- (a) Unless other matters are pending, orders approving accounting, sale of real estate or similar matters shall contain provision that this matter is hereby closed pending further proceedings and a provision relating to the Clerk's cost.
- (b) If an annual accounting is not required, an Annual Report shall be required each year and the Clerk will send notice of this Annual Report being due. The Annual Report shall contain information as to the condition and location of the ward as well as other information as may be requested by the Clerk, such as who the caregiver is and if they are related to the ward.

RULE 18. PROBATE

18.01 Probate Hours

The daily session of the Probate Division of Part 2 shall be from 9:00 to 10:00 A.M. All other times shall be by appointment only.

18.02 Attorneys

No one except an attorney licensed to practice law in Tennessee shall be permitted to represent an estate in matters coming before the Court, except affiants in "Small Estates" as defined by law.

18.03 Pleadings & Orders

- (a) The Clerk shall prepare: orders confirming reports of the Master on accountings and settlements; orders authorizing initial the issuance of letters; orders of reference to the Master for all exceptions to claims, year's support, homestead, exempt property and elective share; and other orders as directed by the Chancellor.
- (b) All other orders and decrees shall be prepared by attorneys of record and approved by them before being submitted to the Court. Pleading forms furnished by the Clerk shall be used, except counsel may prepare pleadings identical in content and format to those furnished by the Clerk.

18.04 Interested Parties

- (a) Interested parties include a spouse, beneficiary, legatee, devisee, fiduciary, heirs and income and remainder

beneficiaries of a trust.

- (b) Notice and service of process is not required for an interested party who joins in a petition as a petitioner or who files a sworn waiver or consent.

18.05 Petitions

- (a) A verified petition to probate a will, codicil, other testamentary instrument or to administer an intestate estate shall set forth such information as is required by statute and these rules including the names, addresses, relationships of all legatees and devisees under the testamentary instruments and the names of the surviving spouse and next of kin.
- (b) Notice of petitions for elective share, year's support, homestead and exempt property shall be given to the personal representative of the estate, attorneys of record and all interested parties (including creditors if the estate may be insolvent). If the personal representative is the surviving spouse, an administrator *ad litem* shall be appointed.

18.06 Common Form Probate

Petitions for probate in common form may be heard either by the Court or by the Clerk. Petitioner should give notice to all interested parties prior to the hearing of the petition.

18.07 Solemn Form Probate

Petitions for probate in solemn form shall be heard by the Court, after service of process notice required by statute at a time and date set by the Court.

18.08 Holographic Wills

In holographic will proceedings the testimony of two witnesses concerning the handwriting of the decedent shall be taken in person, except for good cause one such witness may give an affidavit or deposition. Testimony as to testamentary intent shall be in person.

18.09 Small Estates

Estates coming within the provisions of the Small Estates Act may be heard by the Clerk or the Court. Bond shall be required in all small estates.

18.10 Claims

Verified claims must be filed with the Clerk in triplicate with any required supporting documents as provided by statute. The Clerk may decline to file claims until the claim fee required by statute is paid.

18.11 Master to Act

- (a) Unless otherwise ordered by the Court, the Clerk & Master is empowered to hear without a specific order of reference the following matters:
 - (1) applications for letters testamentary and of administration;
 - (2) adjudicate probate claims and exceptions thereto;
 - (3) determine year's allowance to surviving spouse and minor children;
 - (4) preside over assignment of homestead;

(5) determine elective share of surviving spouse; and

(6) take and state all accounts and settlements.

(b) The Clerk & Master shall file a written report of findings and actions on the above matters.

(c) Rule 53 of the Tennessee Rules of Civil Procedure and Rule 12 of these rules shall govern the procedures for master's hearings and exceptions to, or confirmations of Master's Reports

18.12 Inventories and Accountings

(a) Inventories and accountings may be waived (i) if the Will so provides, or (ii) if all of the residuary beneficiaries or legatees file with the Clerk waivers excusing the personal representative from the requirement. If a residuary beneficiary is under a disability or the estate is insolvent, a final accounting cannot be waived. A Sworn Statement in Lieu of Final Accounting is required even if accountings are waived.

(b) Sworn Statements in Lieu of Final Accounting shall comply with all the requirements of the statutes and shall state the gross taxable value of the estate. Approval of personal representative fees and attorney fees may be included in the Sworn Statement.

(c) Notice of the filing and taking of an accounting must be as provided by law.

(d) The final accounting shall bear a certificate of the personal representative that the estate has been distributed in accordance with the instrument admitted to probate, or, in intestate cases, in accordance with the laws of descent and distribution.

(e) Upon failure to file accountings within the time required by law, the Court may revoke letters issued to a personal representative and appoint the Public Administrator or a successor personal representative.

(f) If an estate is not closed within two (2) years from the date of qualification of the personal representative, additional time to file accountings will be granted only by motion and notice to interested parties.

18.13 Summary Removal and Sanctions

Failure to comply with statutory requirements or orders of the Court shall constitute grounds for summary removal of the personal representative. In addition, the Court may impose sanctions such as forfeiture of earned fees and taxation of fees and costs against the defaulting party.

18.14 Fees & Expenses

(a) Court approval of legal fees and expenses is required in all circumstances unless: (i) they are approved in writing by all interested parties (or their legal guardian), and (ii) they do not exceed the percentages of the estate value set out in one of the following schedules as such are presumed reasonable in the absence of objection ("gross estate" for this purpose is the gross estate for inheritance Tax purposes):

<u>Gross Estate</u>	<u>Schedule 1</u>	<u>Schedule 2</u>	<u>Schedule 3</u>
1 st 20,000	5%	2.5%	1.25%
next 80,000	4%	2.0%	1.0%
next 150,000	3%	1.5%	0.75%
next 500,000	2%	1.0%	0.5%
over 750,000	1%	0.5%	0.25%

(b) Legal Fees & Expenses:

(1) apply Schedule 1 if the personal representative is not regularly engaged in the business of

administering estates, or

- (2) apply Schedule 2 if the personal representative is regularly engaged in the business of administering estates.

(c) Personal Representative Fees & Expenses:

- (1) apply Schedule 1 if the personal representative is regularly engaged in the business of administering estates, or

- (2) apply Schedule 3 if the personal representative is not regularly engaged in the business of administering estates.

- (d) If fees and expenses have not been properly approved as required by this rule, or if objections are filed by motion, the Clerk shall, on reference, determine a reasonable fee and report such to the Court.

RULE 19. REAL PROPERTY SALE

19.01 Property Description

Complaints seeking a sale by partition, general lienor's suits and all other actions to sell real property shall set forth the complete legal description and the street name and number of the property.

19.02 Sale of Property Orders

Unless otherwise specifically directed by the Court, all orders for the sale of property shall:

- (a) state that the sale will be held on the western steps of the Hamilton County Courthouse by public outcry to the highest bidder for cash, and

- (b) include the following information:

- (1) map-parcel-group number;
- (2) street address and, if none available, a statement that no street address is available and designate the nearest intersection of public streets or roads; and
- (3) complete legal description of the property.

19.03 Advertising

The Clerk, in advertising the sale of real property, shall set out the street address, if available, as well as the description as set forth in LRCP 19.02(b) above.

19.04 Orders Confirming Sale

Unless otherwise specifically directed by the Court, all orders confirming the sale of property shall:

- (a) attach as an exhibit expressly incorporated in the order by reference the property description required by LRCP 19.02(b);

- (b) contain the address of each grantee;

- (c) contain the name and address for the mailing of tax bills; and

- (d) direct the Clerk to make the following disbursements where applicable: (1) appraisal fees; (2) attorney fees; (3) brokerage fees; (4) claims or encumbrances such as mortgages, notes and liens;(5) closing costs; (6)commissions on real estate; (7) court costs; (8) court reporter fees; (9) deed preparation and filing;(10) delinquent taxes; (11) guardian *ad litem* fees; (12) property insurance pro ration; (13) recording fees; (14) rents pro rated to closing date; (15) revenue stamps; (16) survey fees; (17) taxes pro rated current to closing date;(18) title insurance ordered and paid for; and (19) balance of funds to listed recipients with their complete names, addresses, social security number and percentage of balance of funds to each.