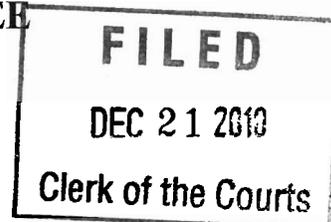


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE



IN RE: AMENDMENTS TO TENNESSEE
RULES OF CIVIL PROCEDURE

ORDER

The Court adopts the attached amendments effective July 1, 2011, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 6	TIME
RULE 26	GENERAL PROVISIONS GOVERNING DISCOVERY
RULE 36	REQUESTS FOR ADMISSION
RULE 45	SUBPOENA
RULE 62	STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT
RULE 72	DECLARATIONS MADE UNDER PENALTY OF PERJURY.

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

IT IS SO ORDERED.

FOR THE COURT:

Cornelia A. Clark
CORNELIA A. CLARK, CHIEF JUSTICE

APPENDIX

**2011 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 6

TIME

[Amend Rule 6.01 as indicated:]

6.01. Computation. – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday as defined in Tenn. Code Ann. § 15-1-101, or, when the act to be done is the filing of a paper in court, a day on which the office of the court clerk is closed or on which weather or other conditions have made the office of the court clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

6.02. * * * *

2011 Advisory Commission Comment

Rule 6.01 is amended to define “legal holiday” by reference to statute, Tenn. Code Ann. § 15-1-101. The status of a day as a legal holiday is statutory; thus, for the purpose of filing papers in court, it does not depend on whether the clerk’s office is open for business. For example, state offices might be open on Columbus Day, pursuant to the governor’s authority under Tenn. Code Ann. § 4-4-105(a)(3) to substitute the day after Thanksgiving for the Columbus Day holiday; in such circumstances, however, Columbus Day is still a “legal holiday” for purposes of computing time periods under the rule.

Rule 6.01 also is amended to add a reference to days on which the office of the court clerk is closed.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 26

GENERAL PROVISIONS GOVERNING DISCOVERY

[Amend Rule 26.02(4) as set out below; the remaining provisions of Rule 26 are unchanged:]

* * * *

(4) TRIAL PREPARATION: EXPERTS. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. In addition, upon request in an interrogatory, for each person so identified, the party shall disclose the witness's qualifications (including a list of all publications authored in the previous ten years), a list of all other cases in which, during the previous four years, the witness testified as an expert, and a statement of the compensation to be paid for the study and testimony in the case.

(ii) A party may also depose any other party's expert witness expected to testify at trial.

(B) A party may not discover the identity of, facts known by, or opinions held by an expert who has been consulted by another party in anticipation of

litigation or preparation for trial and who is not to be called as a witness at trial except as provided in Rule 35.02 or upon a showing that the party seeking discovery cannot obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (4)(A)(ii) and (4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

* * * *

2011 Advisory Commission Comment

The sentence added to Rule 26.02(4)(A)(i) concerning discovery of information about those intended to be called as expert witnesses at trial is designed to minimize the cost of learning additional information about an opposing party's expert witnesses. The change permitting the discovery of a list of cases where the expert gave testimony during the previous four years includes expert testimony given in a hearing, deposition, trial, administrative or arbitration proceeding. The list should include the case name, docket number and jurisdiction for court and administrative proceedings and, for arbitrations, information sufficient for the recipient to identify the counsel to the parties in the arbitration.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 36

REQUESTS FOR ADMISSION

[Amend the first paragraph of Rule 36.01 as set out below; the remaining paragraphs of 36.01, as well as the subsequent paragraphs of Rule 36, are unchanged:]

36.01. Request for Admission. — A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26.02 set forth in the request that relate to (a) facts, the application of law to fact, or opinions about either; and (b) statements or opinions of fact or of the application of law to fact, including the genuineness of any described documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

* * * *

2011 Advisory Commission Comment

This amendment to Rule 36.01 is the same change that was made to Rule 36(a) of the Federal Rules of Civil Procedure in 2007. This change reinforces the point that a request is not objectionable merely because it asks an adversary to admit an opinion about facts or an opinion requiring the application of law to fact. This amendment should render obsolete any contrary suggestion that may be drawn from *Brooks v. United Uniform Co.*, 682 S.W.2d. 913 (Tenn. 1984).

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 45

SUBPOENA

[Amend Rule 45.07 as set out below:]

* * * *

45.07. Protection of Persons Subject to Subpoena. — ~~With respect to any subpoena issued under this rule the Court, U~~pon motion made promptly within fourteen days after the subpoena is served and ~~in any event at or before the time specified in the subpoena for compliance therewith, whichever is earlier, the Court~~ may: (1) quash or modify the subpoena if it is unreasonable and oppressive; or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, electronically stored information, or tangible things. The timely filing of a motion to quash or modify obviates the need for compliance with the subpoena pending further order of the court. The failure to file a motion within the time period specified herein waives all objections to the subpoena except the right to seek the reasonable costs for producing books, papers, documents, electronically stored information, or tangible things.

* * * *

2011 Advisory Commission Comment

Rule 45.07 was amended to clarify the obligations of one who chooses to object to a subpoena issued under this rule. If a person served with a subpoena wishes to challenge it for any reason, a motion to quash or modify must be filed within fourteen days of service, unless the time for compliance is less than fourteen days from the date of service, in which event the motion to quash or modify must be filed before the date and time specified for compliance. The failure to timely file a motion to quash or modify waives all objections to the subpoena except the right to seek reasonable costs for producing books, papers, documents, electronically stored information, or tangible things.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 62

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

[Amend Rule 62.02 as indicated:]

62.01. * * * *

62.02. Additional Stay on Specified Timely Motions. — The execution of or any proceedings to enforce a judgment shall also be stayed pending and for 30 days after entry of any of the following orders made upon timely motion: (1) granting or denying a motion under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) granting or denying a motion 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) granting or denying a motion under Rule 59.04 to alter or amend the judgment; and (4) denying a motion under Rule ~~59.02~~ 59.07 for a new trial.

62.03. * * * *

2011 Advisory Commission Comment

The amendment of Rule 62.02 corrects an erroneous cross-reference, changing “59.02” to “59.07.”

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 72

DECLARATIONS MADE UNDER PENALTY OF PERJURY

[Adopt New Rule 72:]

Wherever these rules require or permit an affidavit or sworn declaration, an unsworn declaration made under penalty of perjury may be filed in lieu of an affidavit or sworn declaration. Such declaration must be signed and dated by the declarant and must state in substantially the following form: “I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.”

2011 Advisory Commission Comment

Rule 72 is intended to make the practice pursuant to the Tennessee Rules of Civil Procedure consistent with the practice in the federal courts in accordance with 28 U.S.C. § 1746. The Commission notes it is frequently difficult and expensive to procure notarization of an affidavit in a timely manner, particularly when testimony is required from a non-party witness who does not have ready access to a notary public. The Commission further notes that in 2010 the Tennessee General Assembly enacted the “Uniform Unsworn Foreign Declarations Act,” which provides in part, “Except as otherwise provided in subsection (b), if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this part has the same effect as a sworn declaration.” 2010 Tenn. Pub. Acts, ch. 904, § 1.