IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENTS TO THE TENNESSEE RULES OF CIVIL PROCEDURE

No. ADM-2015-01631

ORDER

The Court adopts the attached amendments effective July 1, 2016, subject to approval by resolutions of the General Assembly. The rules amended are as follows:

RULE 4	PROCESS
RULE 30	DEPOSITIONS UPON ORAL EXAMINATION
RULE 69	EXECUTION ON JUDGMENTS.

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

IT IS SO ORDERED.

FOR THE COURT:

Sharon G. Lee

SHARON G. LEE
CHIEF JUSTICE

APPENDIX

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 4

PROCESS

[Amend Rule 4 and its existing Advisory Commission Comments as shown below; deleted text is indicated by overstriking, and new text is indicated by underlining:]

4.01. Summons; Issuance; By Whom Served. — (1) Upon the filing of the complaint, the clerk of the court ~~wherein the complaint is filed~~ shall ~~forthwith~~ promptly issue the required summons and cause it, with necessary copies of the complaint and summons, to be delivered for service to any person authorized to serve process. This person shall serve the summons, and the return ~~indorsed~~ endorsed thereon shall be proof of the time and manner of service. A summons may be issued for service in any county against any defendant, and separate or additional summonses may be issued against any defendant upon request of plaintiff. Nothing in this rule shall affect existing laws with respect to venue.

(2) A summons and complaint may be served by any person who is not a party and is not less than 18 years of age. The process server must be identified by name and address on the return.

(3) If a plaintiff or counsel for a plaintiff (including a third-party plaintiff) intentionally causes delay of prompt issuance or prompt service of a summons, ~~filing of the complaint (or third-party complaint) is ineffective.~~the filing of the complaint (or third-party complaint) will not toll any applicable statutes of limitation or repose.

4.02. Summons; Form. — * * * *

4.03. Summons; Return. — (1) * * * *

(2) * * * *

(3) Failure to promptly file proof of service does not affect the validity of service.

4.04. Service Upon Defendants within the State. — The plaintiff shall furnish the person making the service with such copies of the summons and complaint as are necessary. Service shall be made as follows:

(1) * * * *

* * * *

(11) When service of a summons, process, or notice is provided for or permitted by registered or certified mail under the laws of Tennessee and the addressee or the addressee's agent refuses to accept delivery and it is so stated in the return receipt of the United States Postal Service, the written return receipt if returned and filed in the action shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing. ~~For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the defendant's refusal to accept delivery.~~

4.05. Service Upon Defendant Outside This State. — (1) Whenever the law of this state authorizes service outside this state, the service, when reasonably calculated to give actual notice, may be made:

(a) by any form of service authorized for service within this state pursuant to Rule 4.04;

(b) in any manner prescribed by the law of the state in which service is effected for an action in any of the courts of general jurisdiction in that state;

(c) as directed by the court.

The provisions of this Rule ~~(4.05)~~ 4.05 are inapplicable when service is effected in a place not within any judicial district of the United States.

(2) Service of process pursuant to this Rule ~~(4.05)~~ 4.05 shall include a copy of the summons and of the complaint.

(3) Service by mail upon a corporation shall be addressed to an officer or managing agent thereof, or to the chief agent in the county wherein the action is brought, or by delivering the copies to any other agent authorized by appointment or by law to receive service on behalf of the corporation.

(4) Service by mail upon a partnership or unincorporated association (including a limited liability company) that is named defendant under a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

(5) When service of summons, process, or notice is provided for or permitted by registered or certified mail, under the laws of Tennessee, and the addressee, or the addressee's agent, refuses to accept delivery, and it is so stated in the return receipt of the United States Postal Service, the written return receipt, if returned and filed in the action, shall be deemed an actual and valid service of the summons, process, or notice. Service by mail is complete upon mailing. Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute. ~~For purposes of this paragraph, the United States Postal~~

~~Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the defendant's refusal to accept delivery.~~

4.06. Reserved. — * * * *

* * * *

Advisory Commission Comments.

* * * *

4.03: (1) Rule 4.03 fixes a definite time – ~~30~~ 90 days – within which summons must be served; if not served within that period, it must be returned unserved. The Rule includes a requirement that the manner of service must be described and the person served must be identified on the return; thus any departure from the routine manner of service will instantly be apparent to the court and to defendant's counsel.

(2): Paragraph 2 explains how return of service of process by mail is accomplished. It is similar to the method used for return of service of process on nonresidents (Tenn. Code Ann. §§ 20-2-206; 20-2-211; 20-2-216). [1984.]

* * * *

4.05~~8~~: Rule ~~4.05 [now~~ 4.08~~]~~ makes it clear that, in the absence of express provision in these Rules, no changes in the statutes governing constructive service are intended.

4.06~~9~~: Rule ~~4.06 [now~~ 4.09~~]~~ authorizes the court at any time to allow amendment of process or proof of service thereof, but conditions the exercise of the court's discretion upon the absence of a clear showing of material prejudice to the substantial rights of the party against whom process issued.

Advisory Commission Comments [1995]. * * * *

Advisory Commission Comments [1997].

* * * *

~~The last sentence in subpart (5) is an addition to bring the rule into conformity with contemporary practice of the United States Postal Service. It is designated to reinforce the power of courts to deal with individuals who attempt to evade service of process by refusing to accept mail delivery.~~

* * * *

Advisory Commission Comments [1998]. * * * *

Advisory Commission Comments [2004]. New paragraph 4.01(3) ~~would~~ sanctions lawyer misconduct such as that in *Stempa v. Walgreen Company*, 70 S.W.3d 39 (Tenn. Ct. App. 2001), where original counsel for plaintiffs "instructed" the clerk not to issue summonses for almost a year, despite the paragraph 4.01(1) instruction that clerks must issue a summons "forthwith."

Rule 4.04(10) is amended to clarify that service by certified or registered return receipt mail must be addressed to an individual specified in the applicable subparagraph of the rule. For example, service by mail upon a domestic corporation must be addressed to one of the individuals specified in Rule 4.04(4).

~~New Rule 4.04(11) conforms service on Tennessee defendants by "unclaimed" mail to Rule 4.05(5) concerning service on nonresidents.~~

Advisory Commission Comments [2005]. * * * *

Advisory Commission Comments [2016]. 4:01(1): Rule 4.01(1) previously required the trial court clerk, upon the filing of the complaint, to "forthwith issue the required summons and cause it, with necessary copies of the complaint and summons to be delivered for service to any person authorized to serve process." Subdivision (1) is amended by substituting the word "promptly" for the word "forthwith." This change is intended to emphasize that the clerk must issue the summons contemporaneously with, or soon after, the filing of the complaint. Because subdivision (1) requires the clerk to "promptly" issue the summons and deliver it for service, the clerk is not permitted to delay issuing the summons (or delivering it for service) at the request of the plaintiff or plaintiff's counsel.

4.01(3): Subdivision (3) previously provided: "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, filing of the complaint (or third-party complaint) is ineffective." Because the meaning of the word "ineffective" was not clear, subdivision (3) is amended to provide that, under the specific circumstances covered by the subdivision, the filing of the complaint "will not toll any applicable statutes of limitation or repose." The underlying rationale for subdivision (3) is that a person or entity named as a defendant in a complaint is entitled to learn without undue delay that the person or entity has been sued; although good-faith efforts to serve the defendant can necessarily take some time, subdivision (3) means that the plaintiff or plaintiff's counsel cannot intentionally delay the issuance or service of process for tactical reasons.

4.03: Rule 4.03 is amended to add new subdivision (3), providing that the "[f]ailure to promptly file proof of service does not affect the validity of service." Subdivision (3), which is derived from Federal Rule of Civil Procedure 4(l)(3), essentially adopts in the rule the Supreme Court's analysis in *Fair v. Cochran*, 418 S.W.3d 542, 546 (Tenn. 2013) (stating that "no language in Rule 4.03(a) [sic — in context, "4.03(1)"] states or implies that the failure to return proof of service promptly renders commencement ineffective to toll the statute of limitations").

4.04(1): Rule 4.04(1) provides that a defendant who evades or attempts to evade service of the summons and complaint may be served "by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, whose name shall appear on the proof of service[.]" The address shown on the individual's drivers license, handgun-carry permit, utility bill, or other similar document may be used to prove that a particular location is the "individual's dwelling house or usual place of abode[.]"

4.04(11): The former last sentence of subdivision (11) ("For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the defendant's refusal to accept delivery") is deleted because the Postal Service's notation that a registered or certified letter is "unclaimed" is not sufficient, by itself, to prove that service was "refused."

4.05(5): Subdivision (5) is amended in two ways. First, the last sentence of subdivision (5) ("For purposes of this paragraph, the United States Postal Service notation that a properly addressed registered or certified letter is "unclaimed," or other similar notation, is sufficient evidence of the defendant's refusal to accept delivery") is deleted, for the reason stated in the preceding Comment to Rule 4.04(11). Second, the following is added as the new last sentence of subdivision (5): "Service by mail shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing personal acceptance by the defendant or by persons designated by Rule 4.04 or statute." That text is derived from Rule 4.04(10) – which applies to service by mail on defendants within the State – and adding it to subdivision (5) imposes the same requirement on service by mail on defendants outside this State.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 30

DEPOSITIONS UPON ORAL EXAMINATION

[Add the new Advisory Commission Comment (2016) set out below; the text of the rule and the text of the existing Advisory Commission Comments are unchanged:]

Advisory Commission Comment [2016]. Rule 30.03 provides that "[e]xamination and cross-examination of witnesses may proceed as permitted at the trial under the Tennessee Rules of Evidence." This language does not imply that Tenn. R. Evid. 615 is applicable to depositions. Unless otherwise ordered by the court, a lawyer may communicate with a deponent about deposition procedure or the substance of deposition testimony before, during (unless a question is pending) or after the deposition; however, such communications are subject to the Rules of Professional Conduct including, but not limited to, Tenn. Sup. Ct. R. 8, RPC 3.3 and RPC 3.4.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 69

EXECUTION ON JUDGMENTS

[Amend Rule 69.04 by replacing the current text in its entirety with the following new text:]

69.04. Extension of Time. — Within ten years from the entry of a judgment, the creditor whose judgment remains unsatisfied may file a motion to extend the judgment for another ten years. A copy of the motion shall be mailed by the judgment creditor to the last known address of the judgment debtor. If no response is filed by the judgment debtor within thirty days of the date the motion is filed with the clerk of court, the motion shall be granted without further notice or hearing, and an order extending the judgment shall be entered by the court. If a response is filed within thirty days of the filing date of the motion, the burden is on the judgment debtor to show why the judgment should not be extended for an additional ten years. The same procedure can be repeated within any additional ten-year period.

Advisory Commission Comment [2016]. Rule 69.04 is revised to clarify that a judgment creditor must file a motion to extend a judgment, and that it is the motion which provides the judgment debtor notice and an opportunity to object. This revision eliminates the prior procedure of issuance of a show cause order by the court.

The requirement that notice is to the judgment debtor's last known address remains unchanged as the revision provides that the motion shall be mailed to the judgment debtor's last known address.

The revision replaces past practice of a show cause hearing. The revised procedure, subsequent to the filing of a motion by the judgment creditor, is the alternative of: (1) no hearing if the judgment debtor files no response to the motion in 30 days and the extension shall be automatically granted; or (2) if the judgment debtor files a response to the motion in 30 days, the

extension is not automatically granted which provides each party an opportunity to set a hearing. If a hearing is convened, it is at that point that the revision maintains prior practice of placing the burden on the judgment debtor to show why the judgment should not be extended for an additional ten years. The Commission notes that, in most judicial districts, counsel for the judgment creditor will submit a proposed order to the trial court, unless otherwise directed by the court or by local rule.

The extension procedure set out in Rule 69.04 allows the judgment creditor to avoid having the judgment become unenforceable by operation of Section 28-3-110(a)(2), Tennessee Code Annotated. That section provides that an action on a judgment "shall be commenced within ten (10) years after the cause of action accrued." The Commission notes, however, that Section 28-3-110 was amended effective July 1, 2014 to essentially exempt a narrow class of cases from the ten-year statute of limitation imposed by subsection (a)(2). *See* 2014 Tenn. Pub. Acts, ch. 596. The 2014 amendment added new subsections (b) and (c) to the statute. Subsection (b)(1) provides:

> Notwithstanding the provisions of subsection (a), there is no time within which a judgment or decree of a court of record entered on or after July 1, 2014, must be acted upon in the following circumstances:
>
> (A) The judgment is for the injury or death of a person that resulted from the judgment debtor's criminal conduct; and
>
> (B) The judgment debtor is convicted of a criminal offense for the conduct that resulted in the injury or death; or
>
> (C) The civil judgment is originally an order of restitution converted to a civil judgment pursuant to § 40-35-304.

And subsection (c) of the amended statute goes on to provide that, for any still-valid judgment awarded prior to July 1, 2014 and meeting the criteria set out in subsection (b)(1), the ten-year statute of limitation imposed by subsection (a) is tolled if the judgment creditor complies with various procedural requirements. The Commission merely points out these changes to section 28-3-110 for the benefit of any litigant or attorney involved in a case falling within subsection (b) or (c).