

FILED

01/16/2020

Clerk of the
Appellate Courts

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE AMENDMENTS TO THE TENNESSEE
RULES OF CIVIL PROCEDURE

No. ADM2019-01444

ORDER

The Court adopts the attached amendments effective July 1, 2020, subject to approval by resolution of the General Assembly. The rules amended are as follows:

- RULE 5 SERVICE AND FILING OF PLEADINGS
AND OTHER PAPERS;
- RULE 5B ELECTRONIC FILING, SIGNING,
VERIFICATION AND SERVICE;
- RULE 33 INTERROGATORIES TO PARTIES;
- RULE 34 PRODUCTION OF DOCUMENTS AND
THINGS AND ENTRY UPON LAND FOR
INSPECTION AND OTHER PURPOSES

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

IT IS SO ORDERED.

FOR THE COURT:



JEFFREY S. BIVINS
CHIEF JUSTICE

APPENDIX

*AMENDMENTS TO THE
RULES OF CIVIL PROCEDURE*

**[Deleted text is indicated by overstriking,
and new text is indicated by underlining.]**

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

[Revise the text of subsection 5.02 and add the new Advisory Commission Comment (2020 Amendment) set out below. Additions are underlined and deleted text is stricken.]

Rule 5.02: *Service — How Made.* Service shall be made pursuant to one of the methods set forth in (1), (2), or (3). 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~~on the attorney unless service ~~upon~~on the party is ordered by the court. ~~Service shall be made pursuant to the methods set forth in (1) or (2).~~ If an attorney has filed a notice of limited scope representation or a notice of limited appearance for an otherwise self-represented person, pursuant to Rule 11.01(b), service shall be made on the self-represented person and on the attorney until such time as a notice of completion of limited scope representation has been filed. After notice of completion of limited scope representation has been filed, service ~~upon~~on the attorney previously providing limited scope representation shall no longer be necessary.

(1) Service ~~upon~~on the attorney or ~~upon~~on a party ~~shall~~may be made by delivering to ~~him or her~~the attorney 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~~Documents which may be filed by facsimile transmission pursuant to Rule 5A may be served by facsimile transmission.

(2) (a) Service ~~upon~~on any attorney may also be made by ~~sending~~emailing ~~him or her~~ the attorney 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."²² The certificate shall be sent to all counsel of record.

(b) ~~An attorney~~A sender who ~~sends~~sends emails 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~~by email 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)~~ or (3).

(3)(a) Service required by these rules also may be made on any registered user of a court's E-filing system by filing any document that may be E-served with that court's E-filing system. E-service shall constitute effective service under these rules and no other service on such registered users is required, unless otherwise ordered by the court.

(b) Any attorney or any self-represented party who is not a registered user of an E-filing system, or known by the E-filer not to have been E-served, must be served by a means authorized in subsection (1) or (2) of this rule.

(c) Unless ordered otherwise by the court, a court or court clerk may, through such court's E-filing system, transmit to registered users all notices, orders, opinions, or judgments filed by the court or court clerk, which transmission shall constitute proper service and shall satisfy the notice requirements of Tenn. R. Civ. P. 58 or any other applicable rules of procedure.

(d) Any court has the discretion, for good cause shown, to order that a means of service authorized in these rules other than E-service be required in a particular case.

(e) A document that is E-served shall be treated as a document that was mailed for purposes of computation of time under Rule 6.

(f) For purposes of E-service under Rule 5, the definitions in Rule 5B shall apply.

Advisory Commission Comment [2020 Amendment]

Advisory Commission Comments [2020]. Rule 5.02(3) has been added to provide for electronic service through a court's E-Filing system, provided that such a system has been authorized by

such court pursuant to Rule 5B of these rules. The amended rule authorizes E-service through a court's electronic transmission facilities as to any registered user of such facilities. An attorney or party who chooses to become a registered user of a court's E-filing system shall be required to accept service through the court's electronic facilities unless otherwise ordered by the court in that particular case. As a result of this amendment, service may be effectuated under these rules by any of three means: the conventional means of service authorized in Rule 5.02(1), by electronic transmission or email as authorized in Rule 5.02(2), or by E-service pursuant to Rule 5.02(3) in those courts that have adopted an E-filing system that complies with Rule 5B and the technological standards promulgated by the Tennessee Supreme Court.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 5B

ELECTRONIC FILING, SIGNING, VERIFICATION AND SERVICE

[Add the text below to Rule 5B and add the new Advisory Commission Comment (2020 Amendment) set out below. Additions are underlined and deleted text is stricken.]

Any court governed by these rules may, by local rule, allow ~~papers~~documents to be filed, signed, ~~or~~and verified by ~~electronic means~~registered users of an E-filing system. Any local rule that comply with technological standards promulgated by the Supreme Court, allows documents to be E-filed may also allow such documents to be E-served. Pleadings and other ~~papers~~documents filed or served electronically under any such local ~~rules~~rule shall be considered the same as written ~~papers~~documents filed or served by conventional means. The following definitions shall apply herein:

(a) “E-file” or “E-filing” means the proper electronic transmission of original documents to and from the court for the purposes of E-filing using the court’s E-filing system.

(b) “E-Filer” means a registered user who e-files a document.

(c) “E-Filing system” means a system adopted by local rule of any Circuit, Chancery, Criminal, Probate, Juvenile or General Sessions Court Clerk that allows for the E-filing of documents and is in compliance with the technological standards promulgated by the Tennessee Supreme Court.

(d) “E-service” or “E-served” means the automatically generated electronic transmission to all participants in a case who are registered users, by and through the E-filing system, of (i) a notice of the filing of a document with a copy of the document attached, (ii) a notice of the filing of a document with a hyperlink to the document, or (iii) a notice of the filing of a document and the document can be accessed by the registered user in the E-filing system.

(e) A “registered user” is a person who has properly registered with and has been authorized by a court system administrator to use an E-filing system for the E-filing of documents in accordance with the requirements of a local rule of court. A registered user is deemed to have consented to E-service and is responsible for maintaining a valid and current e-mail address in the E-filing system.

Advisory Commission Comment [2020 Amendment]

Advisory Commission Comments [2020]. Rule 5B is amended along with Rule 5.02 to provide for a means of service through a Court’s e-filing system adopted in accordance with the first sentence of this rule. The existing Rule 5B provides for e-filing under applicable local rules, but does not provide for service to be made through an e-filing system. The 2020 amendment provides rules for service to be accomplished through an e-filing system. These definitions apply when service is made through an e-filing system under Rule 5.02

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 33. INTERROGATORIES TO PARTIES.

[Revise the text of the second paragraph of subsection 33.01 and add the new Advisory Commission Comment (2020 Amendment) set out below. Additions are underlined and deleted text is stricken.]

Rule 33.01: Availability; Procedures for Use.

* * * *

Each interrogatory shall be answered separately and fully in writing under oath, unless an objection is made to it or to a portion thereof, in which event the reasons and grounds for objection shall be stated with specificity in lieu of an answer for that portion to which an objection is made. An objection must clearly indicate whether responsive information is being withheld on the basis of that objection. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

* * * *

Advisory Commission Comment [2020 Amendment]

Rule 33.01 is amended to require that objections to interrogatories be stated with specificity. The amendment is intended to make clear that vague, generalized, or “boilerplate” objections are improper. Instead, objections should be specific as to the grounds for the objection, describing the reason(s) in a manner that will reasonably inform the adverse party as to what aspect of the interrogatory the objection pertains, thereby facilitating the resolution of discovery disputes without the need for judicial intervention.

In addition, the rule is amended to require that any objection or response under Rule 33 make clear whether information is actually being withheld pursuant to that objection, if any. A

responding party may object to part of a request, but a party should answer any part of an interrogatory for which no objection is made, making clear which part is being answered.

For example, a responding party may object to a Rule 33 interrogatory as overly broad on the grounds that the time period covered is too long, or that the breadth of sources from which documents are sought is unduly burdensome, providing the specific bases therefore, and further making clear whether the objection is being made in whole or in part. For any such objection or answer that covers only a part of the interrogatory, it should be clear from the objection or answer that the information contained in the answer is being limited to covering the specifically identified time period or sources for which the responding party has no objection.

This amendment should end the confusion that frequently arises when a responding party states several objections, but then still answers the interrogatory by providing information, leaving the requesting party uncertain whether and to what extent relevant and responsive information has been withheld on the basis of the objection. The producing party does not need to provide a detailed description or log of information withheld, but does need to respond in a manner that will alert and inform parties what information is being provided, and what categories or types of information have been withheld pursuant to objection, thereby facilitating an informed discussion of the objection.

TENNESSEE RULES OF CIVIL PROCEDURE

RULE 34

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

[Revise Advisory Commission Comment (2019 Amendment) set out below:]

Advisory Commission Comment [2019 Amendment]

...

This amendment should end the confusion that frequently arises when a producing party states several objections, but then still produces information, documents, and things, leaving the requesting party uncertain whether and to what extent relevant and responsive information has been withheld on the basis of the objection. The producing party does not need to provide a detailed description or log of all documents and things withheld, but does need to respond in a manner that will alert and inform parties what documents and things are being produced, and what categories or types of documents and things ~~has~~ have been withheld pursuant to objection, thereby facilitating an informed discussion of the objection.