

**LOCAL RULES OF PRACTICE
GENERAL SESSIONS COURT
Criminal & Civil
HAMILTON COUNTY, TENNESSEE**

March 1, 2014

TABLE OF RULES

RULE

1. AUTHORITY AND ABROGATION OF FORMER RULES GARNISHMENTS	12.
2. CODE OF PROFESSIONAL CONDUCT CASE DOCKETS	13. CRIMINAL
3. GENERAL SESSIONS COURT RECORDS CONTINUANCES	14. CRIMINAL CASE
4. GENERAL SESSIONS COURT ASSIGNMENTS AND DOCKETS DOCKET	15. COMPLIANCE
5. COURTROOM DECORUM, PROCEDURES AND APPROPRIATE ATTIRE PROCESS	16. SUBPOENAS 17. SERVICE OF
6. REPRESENTATION AND ATTORNEYS	18. PLEA AGREEMENTS
7. COURTROOM SECURITY	19. BAIL BOND
8. SECURITY OF CHAMBERS AND ADJACENT AREAS FORFEITURE/PROPERTY	20.
9. CIVIL CASE DOCKETS	SEIZURE WARRANTS
10. CIVIL CASE CONTINUANCES DRIVER'S LICENSE	21. RESTRICTED
11. LANGUAGE INTERPRETERS	

RULE 1. AUTHORITY AND ABROGATION OF FORMER RULES

As set forth herein, the Local Rules of Practice for General Sessions Court of Hamilton County, Tennessee, are hereby adopted pursuant to the authority of Tenn. Code Ann. § 16-15-406 and § 16-15-714. All former rules of local practice are hereby void, except as readopted herein. Each rule is applicable to all General Sessions Court matters, whether civil or criminal, unless otherwise specified by rule. The purpose of these rules is to facilitate the just determination of every proceeding in this Court by securing consistency, simplicity in procedure, impartiality and fairness in administration, thereby eliminating unjustifiable expense and delay.

RULE 2. CODE OF PROFESSIONAL CONDUCT

The ethical standards for the practice and the administration of law in General

Sessions Court shall be governed by the *Tennessee Court Rules Annotated, Rules of the Supreme Court*, Rule 8, "Rules of Professional Conduct."

RULE 3. GENERAL SESSIONS COURT RECORDS

A. The Clerk of Court of General Sessions, Criminal Division, shall be responsible for the custody, control, and safekeeping of all General Sessions Criminal court records and documents, including search warrants and the collection of all fines, costs and restitution unless otherwise ordered.

B. The Clerk of Court of General Sessions, Civil Division, shall be responsible for the custody, control, and safekeeping of all General Sessions Civil court records and documents, and the collection of all fines, costs and restitution unless otherwise ordered.

C. Only the Court Clerk or the Clerk's representative shall remove civil warrants, criminal warrants, or any other court documents from the courtrooms, or the clerk's office.

D. All written pleadings, orders, judgments, and executions shall be filed with the appropriate Civil or Criminal Court Clerk. Documents submitted for filing shall be in compliance with forms as specified by the Clerk of Court.

E. With respect to filings not in compliance with this rule, Supreme Court Rule 36(d) shall apply.

RULE 4. GENERAL SESSIONS COURT ASSIGNMENTS AND DOCKETS

Hamilton County General Sessions Court operates five courtrooms, all of which are located on the second floor of the Hamilton County-City Courts Building. The five General Sessions Court Judges rotate each week to one of the five court rooms, as indicated on the dockets.

A. Upon arrest, criminal defendants are randomly assigned by computer to one of the five judges, and remain assigned to that judge so long as that defendant's case(s) are pending or otherwise subject to a probationary period. Where two or more defendants are co-defendants on a matter, the co-defendants will be reassigned to the judge who was first assigned to a co-defendant.

B. The dockets for the Criminal Divisions of General Sessions Court shall be posted daily in a conspicuous place at the office of the Clerk of Court of General Sessions, Criminal Division, in the Hamilton County-City Courts Building. The dockets for the Civil Division of General Sessions Court shall

be posted daily in a conspicuous place at the office of the Clerk of Court of General Sessions, Civil Division. Both civil and criminal dockets can be found online at www.hamiltontn.gov/sessions/dockets.

C. Docket scheduling shall be done through the offices of the General Sessions Court Clerks, Criminal and Civil Divisions, both of which are located on the first floor of the Hamilton County-City Courts Building. Unless changed by the presiding judge because of necessity or convenience, the schedules of the courts are:

(1) Criminal cases commence in Courtrooms 1, 3 and 4 at 8:30 a.m. Monday through Friday, except as closed for holidays and as otherwise set forth by Court order. A lunch recess may be taken at noon, or as otherwise determined by the presiding judge;

(2) The Domestic Violence docket is heard each Monday at 8:30 a.m. in Courtroom 3;

(3) Courtroom 5 is reserved each Monday for domestic violence victims, witnesses and related programs/resources, to the exclusion of defendants for purposes of safety;

(4) The criminal settlement and compliance dockets are held Monday through Thursday at 1:30 p.m. in Courtrooms 1, 3 and 4;

(5) Mental health hearings are conducted each Thursday at 9:00 a.m. for Valley Hospital commitments via video conferencing and at 10:00 a.m. at Moccasin Bend Mental Health Institute.

(6) All civil matters commence in Courtroom 6. Each Monday, the detainer docket commences at 8:30 a.m. First settings of all other civil cases are set for Monday at 11:00 a.m. for purposes of scheduling a trial date, dismissal, settlement or entry of default judgments only. Civil trials are scheduled at 9:00 a.m. Tuesday through Friday, commencing in Courtroom 6 and delegated between Courtroom 5 and 6 as deemed appropriate by the judge presiding in Courtroom 6.

RULE 5. COURTROOM DECORUM, PROCEDURES AND APPROPRIATE ATTIRE

A. At the opening of each session of court, everyone shall rise and remain standing until the court officer formally opens court. The area within the bar is reserved for attorneys, court personnel, officers and participants in

the case immediately before the court. All other people shall be seated outside of the bar. Although the gallery is open to the public, the court may exclude any persons from court if they are found disruptive or as otherwise determined appropriate for safety of the court.

B. The behavior of all participants, attorneys, witnesses, and spectators shall conform to strict standards of decency, dignity, etiquette, and propriety. Everyone shall remove hats, raincoats, and sunglasses before entering the courtroom. Demonstrations, acts of misconduct, loud talking, or any disruption shall not be permitted inside or outside the courtroom.

C. While in the courtroom, all electronic and/or cellular devices must be turned off and shall not be utilized by anyone except attorneys and court personnel as necessary. Unless authorized by the presiding judge, no audio or visual recordings, including photography are permitted except by attorneys during his/her representation at a proceeding.

D. The conduct and attire of all attorneys and court attendants shall be professional business attire and shall conform to the professional dignity expected of officers of the court. All persons having matters before the court, or otherwise in attendance, must be dressed appropriately, which shall exclude shorts, halter tops, bare midriffs, see-through attire, muscle shirts or tank tops, clothing with written or demonstrative obscenity, pornography or profanity. No clothing shall be allowed that exposes undergarments or any intimate body part.

E. All attorneys shall note their representation on civil warrants and criminal warrants, and shall appear at the client's designated court time, unless the attorney notifies the court of his/her whereabouts so that cases may be disposed of expeditiously.

F. Attorneys shall rise and remain standing when addressing the Court, making a statement, argument, or objection to the Court or questioning a witness.

G. The defendant shall be seated at the defense table or stand before the bench during any hearing or trial, as ordered by the presiding judge. Spectators may use unoccupied seats on first come, first served basis. Standing will not be permitted in the audience unless absolutely necessary.

H. The court officer and other officers serving General Sessions Court shall be responsible for enforcing courtroom rules, procedures and

decorum.

RULE 6. REPRESENTATION AND ATTORNEYS

A. Attorneys representing litigants must be licensed to practice law in the State of Tennessee pursuant to the *Tennessee Court Rules Annotated, Rules of the Supreme Court*, Rule 7 and qualified and registered with the State Board of Professional Responsibility pursuant to the *Tennessee Court Rules Annotated, Rules of the Supreme Court*, Rule 9.

B. Individuals may represent themselves and/or a business that he/she owns, so long as said business is not incorporated. Incorporated businesses must be represented by a Tennessee licensed attorney at all court appearances.

RULE 7. COURTROOM SECURITY

A. Each division of General Sessions Court shall have at least two (2) court officers, one (1) jailer, and one (1) deputy clerk in attendance at all times while court is in session.

B. All persons entering the courthouse must proceed through security, are subject to search and must discard any items that security deems reasonable.

C. The judge of each division of General Sessions Court may require all persons entering the courtroom to consent to a search of their person and belongings to ensure the safety of participants, court personnel, and government property.

RULE 8. SECURITY OF CHAMBERS AND ADJACENT AREAS

A. In order to ensure safety of judges, officers and all personnel of the General Sessions Courts, the General Sessions Court corridor and offices, which area includes the City Court offices, are restricted from access to the public or other persons who are not specifically assigned to an office or the area, i.e., General Sessions Court judges, administrators, officers or as otherwise permitted entrance upon request through the main corridor door, which provides video and intercom monitoring of entrants.

B. Access to the corridor and/or courtrooms from the side door or any back doors to the courtrooms is prohibited by any unauthorized persons. Only General Sessions Court judges, administrators and officers may use for any

purpose the kitchen/lunch area, except as permitted by the Judge. The hallway immediately behind each particular courtroom may be used for plea negotiations if other designated areas herein are unavailable and permission is granted by the Court.

C. The Hamilton County Sheriff's Department shall enforce these policies and procedures to ensure the integrity of the secured area.

RULE 9. CIVIL CASE DOCKETS

A. Civil cases shall be docketed not less than five (5) days from the date of service of the civil warrant, unless an earlier date is agreed upon by all participants, or mandated by law.

B. Civil warrants filed on a pauper's oath shall be accompanied by a completed Affidavit of Indigency, which is available at the Court Clerk's office. The Court may require the affiant to appear and answer questions before ruling on the application.

C. Motions to set installment payments, i.e. slow pay motions, on judgments and motions to stay executions of garnishments shall be filed in duplicate by the defendant or defense counsel, signed by the defendant and sworn to before a notary or the Court Clerk. The hearing will be set not less than five (5) days after the filing date, and a copy of the motion immediately mailed to the adversary party by the defendant or defense counsel. It is the burden of the defendant to show income and all expenses for the court to determine a payment plan, if any, which may be paid within a reasonable period of time.

D. Service of process shall be accomplished as soon as possible after receipt of the civil warrant by the serving officer and return made not less than five (5) days before the trial date to the Court Clerk, unless otherwise provided for by law.

RULE 10. CIVIL CASE CONTINUANCES

A(1). If the plaintiff appears and the defendant fails to appear at the scheduled appearance at the 11 o'clock docket or other trial date, the plaintiff's proof will be heard, or submitted by affidavit, and a default judgment entered by the Court.

A(2). If the defendant appears and the plaintiff fails to appear at the Monday 11 o'clock docket or scheduled trial, the case will be dismissed and costs taxed to plaintiff.

A(3). If both parties fail to appear for the first setting on the 11:00 a.m. Monday docket, the case shall be continued until the following Monday; if

neither party appears at the second hearing, the case shall be dismissed with costs assessed to plaintiff.

B. When both parties fail to appear for a trial and the Clerk of Court of General Sessions, Civil Division does not receive a request for a continuance from either party, the case shall be dismissed and costs assessed to the plaintiff.

C. Either party may file for the disposition to be set aside if filed within 10 days; however, it is within the discretion of the judge whether to grant said motion. The plaintiff may have a continuance to present evidence through witnesses in collection cases filed on sworn statements if a defendant enters a sworn denial in the presence of the judge on the trial date.

RULE 11. LANGUAGE INTERPRETERS

Pursuant to Supreme Court Rule 42, the appointing of a language interpreter is a matter of judicial discretion. If the Court determines that justice requires an interpreter to be appointed, said appointment and scheduling of the interpreter shall be coordinated with the General Sessions Court Administration Office. Pursuant to Supreme Court Rule 42, Section 7(a), the costs for the interpreter shall be taxed as court costs to whichever party the Court deems appropriate. In the event an indigent party is taxed with the court costs, the Court may exercise its discretion to waive said costs.

Cases involving an interpreter will be heard at the beginning of the docket provided the interpreter is prepared for trial.

Foreign language interpreters will be provided for parties involved during criminal in-court proceedings if sufficient notification is made to the Court Administration Office. The Court does not pay for post-adjudication interpretation.

Foreign language interpreters are paid by the Administrative Office of the Courts, if the defendant is declared indigent by the Court. In the event the defendant is not declared indigent, interpretation is taxed with the Court costs. The Court may exercise its discretion to waive said Court costs due to indigency.

Interpreters will be present thirty (30) minutes prior to the scheduled Court appearance.

RULE 12. GARNISHMENTS

A. An execution may be issued only on the written garnishment application by the plaintiff, the plaintiff's attorney or agent of record. Applications must:

- (1) Be completely filled out to be accepted by the Court Clerk;
- (2) Show the amount of the unpaid judgment for each case;
- (3) Interest may be claimed.

B. Garnishments shall be released upon authorization of a judge.

C. First or subsequent Petitions to Pay by Installments ("slow pay") shall be set for a court hearing to determine good cause. The Court Clerk shall not issue any Stay of Garnishment until the Court determines good cause and approves the Petition to Pay by Installments.

D. Motions to stay executions of garnishments shall be:

- (1) Filled out in duplicate by the defendant or defense counsel;
- (2) Signed by the defendant;
- (3) Sworn to before a notary or the Court Clerk before filing;
- (4) May be set for hearing not less than five (5) days after the filing date. The defendant or defense counsel must immediately mail a copy of the motion with the hearing date to the adversary;
- (5) All monies received through garnishments shall be paid to the Clerk of Court.

RULE 13. CRIMINAL CASE DOCKETS

A. All defendants have the duty to:

- (1) Know when they are scheduled to appear in court;
- (2) Appear at each hearing, trial setting, subsequent settings, report back dates or as otherwise ordered by the Court;
- (3) Be physically present during each hearing or trial unless:
 - a. Waived in advance by the defendant in writing;
 - b. Ordered by the Court.

B. Failure to appear as set forth above shall constitute contempt of court and may constitute a separate criminal offense.

C. All defendants shall behave in an orderly, dignified manner. Failure to do so may result in the removal of the defendant from the courtroom pursuant to the *Tennessee Court Rules Annotated, Rules of Criminal Procedure*, Rule 43.

RULE 14. CRIMINAL CASE CONTINUANCES

A. The first time a case is set for trial it may be continued for good reason within the sound discretion of the judge, upon defendant's request in open court, unless excepted by the assigned judge for good cause. The second or subsequent time it is set for trial it will be continued only for compelling reasons. The following are NOT deemed compelling reasons, but may be considered within the discretion of the judge:

- (1) The client has not paid the fee;
- (2) The client has not been to see the attorney;
- (3) Lack of preparation;
- (4) Any other reason that was previously known or should have been known.

B. Only the assigned judge may grant continuances. It is the responsibility of the requesting party to notify the other side of said continuance in advance so that witnesses shall be notified as soon as possible.

C. Unless good cause is shown, all cases shall be disposed of within 120 days.

RULE 15. COMPLIANCE DOCKET

A. The Court may place criminal cases on a Compliance Review Docket after pronouncing judgment, if:

- Office
- (1) The defendant does not immediately pay into the Court Clerk's all fines levied and court costs assessed and due in full;
- or
- (2) The defendant has been ordered into treatment, to make restitution, must complete a program or school as a condition of probation;
 - (3) The defendant has been placed on supervised probation; or
 - (4) At the Court's discretion.

B. If the defendant has been found by the Court to have a present financial inability to pay in full all fines and costs due, the Court may order the defendant to set up a payment plan with the Clerk's Office with full payment

by a date certain. Defendants who fail to pay fines will have driving privileges revoked as provided by law. Additionally, failure of a defendant to make monthly payments or complete any other condition of probation as ordered may result in the defendant's probation being revoked and/or continued.

C. If defendant fails to appear at a compliance review, the Court may issue a probation violation warrant and the defendant may be criminally charged for Failure to Appear.

RULE 16. SUBPOENAS

A. Subpoenas shall be issued not less than seven (7) days prior to the trial date in all civil cases and criminal cases, unless otherwise ordered by the Court.

B. It is the duty of the respective parties to ensure the presence of their subpoenaed witnesses, unless otherwise ordered by the Court.

C. Failure of subpoenaed witnesses to appear may be grounds for a continuance and a Show Cause may be issued ordering said witnesses to appear on the next court appearance or face Contempt of Court.

RULE 17. SERVICE OF PROCESS

A. A civil warrant, or any leading process used to initiate an action in General Sessions Court, and subpoenas or summons may be served by any person designated by the party, or the party's attorney if represented by counsel, who is not a party to the action and is not less than eighteen (18) years of age. Service of other process, post judgment writs, levies, garnishments and executions shall be by the Sheriff, or the Sheriff's designee, as provided by law.

B. The General Sessions Court Clerk shall issue process as provided by law, however, the Clerk shall not knowingly issue process to a process server who has had a felony conviction. The clerk issuing the process shall note the issue date upon the process. The Clerk shall keep information, to be designated by the Court, for the purpose of contacting all private process servers in the event there is a question about the service.

C. Return shall be made to the Court Clerk not less than five (5) days before the trial date unless otherwise provided by law. Return made less than five (5) days before the trial date will result in the trial date being set one week later on the civil docket. All signatures shall be accompanied by the printed name. The return shall have as a minimum the following legible annotations:

- (1) The printed name of the person served. (If possible, the served party should sign the process);
- (2) Printed names of the persons(s) the server was not able to serve;
- (3) Date of service;
- (4) If all required parties were not served, a brief reason for non-service;
- (5) Court date and time.

RULE 18. PLEA AGREEMENTS

All plea agreements shall be accompanied by a written plea agreement which may consist of the original warrant with the appropriate language reflecting the disposition of the case. All plea agreements shall be signed by the Defendant. This rule shall not apply to C misdemeanors.

RULE 19. BAIL BOND

- A. Detention Without Permitting Bond

Bail All bail issues shall be in conformity with the "Release from Custody and Reform Act of 1978" and all amendments thereto.
- B. Duration of Capias

shall Any capias issued pursuant to a forfeiture, either conditional or final, remain in effect until the defendant is apprehended and returned to custody and a disposition is made of the case.
- C. Surrender by Bond Companies

Reform Bondsmen shall be released from their obligation under the Bail Bond Act pursuant to T.C.A. §40 11 138 and T.C.A. §40-11-130. Specifically, a bondsman shall be released when the defendant's case is passed (a) on good behavior; (b) to pay costs; or (c) to do public works or community service.

with Bondsmen shall be released if the defendant has fled to a state that will not extradite or if it is a case in which Tennessee will not proceed extradition.

Bonding companies which are incorporated must be represented by an attorney except as provided by T.C.A. §49-11-137(b)(3).
Any surrender of a defendant by a bonding company shall be in compliance with T.C.A. §40 11 130 through §40 11 137.

RULE 20. FORFEITURE/PROPERTY SEIZURE WARRANTS

Pursuant to Tennessee Code Annotated §40-33-204, Probable Cause Hearings for the issuance of Forfeiture Property Seizure Warrant will be heard in Courtroom 4 and will be recorded, filed and maintained by the Attorney General's office. A certified copy of the recording shall be made available upon request of any party and shall be admissible as evidence.

RULE 21. RESTRICTED DRIVER'S LICENSE

All requests for issuance of a restricted driver's license shall be heard by the assigned judge, if available. All paperwork and files relating to restricted driver's licenses shall be maintained in the Criminal Division of the General Sessions Court Clerk's office.

ENTER this _____ day of _____, 2014.

Respectfully submitted,

Christie Mahn Sell, Division I

Lila Statom, Division IV

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