

# **CIRCUIT AND CHANCERY COURTS:**

Advice for Persons Who Want to Represent Themselves

*Read this booklet before completing any forms!*

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# INTRODUCTION

## The Purpose of This Booklet

For the most part, this booklet is written to assist the persons who start lawsuits. They are called plaintiffs. It can be of benefit, though, to the parties on the other side of cases. They are called defendants.

## Should You Hire a Lawyer?

You are not required to have a lawyer to handle your case. The decision to proceed with or without a lawyer is up to you. Many people find that the paperwork required is complex. If you decide not to use a lawyer, the other party may still use a lawyer and you may be at a disadvantage if you proceed without a lawyer. *If you do not have a lawyer you will be expected to know all the laws and court rules that apply to your case as if you were a lawyer.*

The court may make decisions that could have a significant impact on you, such as requiring you to pay money to the other party or garnishing your wages. Free legal advice may be available to you through volunteer programs organized by the bar association in your county. You may be able to hire a lawyer for a *portion* of a case – such as a hearing before a judge or a review of papers you propose to file – under rules of the Tennessee Supreme Court. See our separate booklet on limited legal representation.

To find out more about hiring a lawyer or obtaining free legal assistance, consult:

- your local bar association
- the Tennessee Bar Association at [www.tba.org/LawBytes/findalawyer.html](http://www.tba.org/LawBytes/findalawyer.html)
- the Tennessee Alliance for Legal Services at [www.tals.org](http://www.tals.org)

JUDGES AND CLERKS MAY NOT GIVE YOU LEGAL ADVICE OR ASSIST YOU WITH YOUR PAPERWORK.

## Rules of Court

While it is possible, it is difficult to litigate even a simple case without consideration of the rules of court. The most important are the Rules of Civil Procedure, the Rules of Evidence, and the rules of your local court. To access them via the Internet, go to <http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/rulesindex.htm>.

# GETTING STARTED

## General Information

### *Choosing the Court*

Cases can usually be filed in either CIRCUIT or CHANCERY courts. *There is no legal advantage in filing in one type of court or another.* With rare exceptions, both courts handle the same types of cases. “Judges” sit in Circuit Courts and “Chancellors” in Chancery Courts. This booklet use the term “judges” for the most part.

### *Starting the Case*

A case is started by filing a **Complaint** with the clerk of the court and by serving it on the defendant. The person filing the Complaint is the plaintiff. The Complaint alleges facts and claims based on those facts. The Complaint also tells the court what the plaintiff would like the court to do in the case.

### *Filing Fees*

There is a filing fee for filing the Complaint, unless the court decides the plaintiff is unable to pay the fee. The amount of the fee is usually about \$250, depending on the county and what kind of legal process must be served. The cost is about \$20 greater if process is served in another county or by the Secretary of State.

If the plaintiff believes he or she qualifies for financial relief, he or she should file an **Affidavit of Indigency**. The court will decide whether to defer – *but not forgive* – the filing fee. (At the conclusion of the case, the judge will decide who must pay the court costs.)

If the court decides the fee must be paid when the case begins, the plaintiff must also file a Cash Bond (an advance payment of an amount, usually \$500, that is refundable if court costs are not imposed on the plaintiff) or a Surety Bond (where an insurer guarantees payment of court costs on a form it prepares). If the plaintiff has an attorney, a Cost Bond may be filed, and by signing this document the attorney guarantees payment of court costs.

### *The Answer by the Defendant*

The person responding to the Complaint is called the defendant. The defendant usually has 30 days in which to file a written **Answer** with the clerk of the court. The time period begins when he or she is served the Summons and Complaint in person, served by newspaper publication because the defendant cannot be found, or served by mail or the Secretary of State because he or she lives out of state.

The defendant must also make arrangements to have copies of the written Answer served on the plaintiff (or the plaintiff's lawyer) within the same time period. If the defendant does not file or serve an Answer within the required time period, the court may enter a default judgment against the defendant.

#### *How Long Does It Take?*

It usually takes several months to complete a case, often more than a year, depending upon the court's schedule and the actions taken by the parties.

#### *What is Mediation and How Does It Affect My Case?*

Mediation is a method of resolving disputes by using a third person to help the parties reach an agreement. The court has a list of qualified mediators who you and the other party may use to help you reach an agreement without going to trial. Mediation is usually not a requirement before you can go to trial, but it is successful in a significant portion of cases and is encouraged by the courts. See our separate booklet on mediation.

#### *Are the Papers that are Filed Available to the Public? Yes.*

### **The Forms**

We offer legal forms that you may use. We strongly urge non-lawyers to use these forms to represent themselves. These are the instructions to help you fill out the forms.

Be sure to make extra copies of all the documents you file with the court and serve on the other party. When you file documents at the court clerk's office, be sure to stamp a copy of the document you retain with the clerk's office stamp "Received (date)" to prove you actually filed the document. Keep an organized file of all court papers, especially proof of service of process of all documents, and letters concerning your case.

*Note: make an extra copy of the forms before you start so that, if you make a mistake and need to start over, you won't have to get another form.*

#### *Forms Needed*

If you are the *plaintiff*, you should have the following forms to start your case:

- **Civil Case Cover Sheet**
- **Summons**, whether the legal papers are to be served by a deputy sheriff or instead by someone on your behalf. We recommend service by a deputy sheriff.
- **Complaint**
- **Affidavit of Indigency** if you cannot afford the filing fee

If you are the *defendant* and you want to present your side of the case, you will need the following forms:

- **Civil Case Cover Sheet**
- **Answer**
- **Affidavit of Indigency** if you make a counterclaim and cannot afford the filing fee

If you are the *plaintiff or defendant* and want an injunction that will last until the Final Decree is entered, use these forms:

- **Motion for Injunction** to protect you or your property
- **Affidavit in Support of Motion** so that you may obtain certain kinds of relief you seek by filing a motion
- **Injunction** to be entered by the court to prohibit or compel an action by the other party

Use these forms in preparation for the trial:

- **Discovery Requests** so that you may obtain information and documents
- **Notice of Deposition** for taking testimony of a witness before trial
- **Subpoena** for each witness at the trial, for each document you cannot otherwise obtain, or both
- **Witness and Exhibit Lists** to be filed with the court clerk

To complete the case, either the *plaintiff or defendant* may use the **Final Decree**.

### *The Heading in Each Form*

It is easy to overlook this portion of each form. You must fill in the county in which the court sits and the court you have selected. (*Reminder:* There is no legal advantage in being in Circuit Court instead of Chancery or another court.) The clerk will assign the case number, so leave this portion of the form blank in the Complaint, but fill it in the other forms. In some counties, there are multiple “divisions” or “parts” because there is more than one judge in the same court. The clerk will complete this part of the Complaint, if it is necessary.

### *Filing the Forms*

Clerks deserve your respect and can make your life easier by pointing out, for example, if you have overlooked a document. Also, if you file documents in person, as usually is desirable, try to avoid busy times like the last 45 minutes of the day.

# GETTING STARTED

## The Complaint

Most of the Complaint is self-explanatory, and this discussion concentrates on what may not be clear. The words in CAPITAL LETTERS are the titles of sections of the document.

**NAMES AND ADDRESSES OF PARTIES.** This information is used for many purposes including the determination of whether the court has jurisdiction. If your address changes during the case, it is important to notify the other party and the clerk.

**BASIS FOR YOUR CLAIM.** State both the facts and the legal reason (such as negligence, breach of contract, or violation of a statute) why the defendant is at fault. You may attach as many pages as you want. When you attach pages, use numbered paragraphs to separate one specific fact or claim from another. This will enable the defendant and the court to keep track of what you state.

**AMOUNT OF CLAIM.** If you are suing for money, you may state a specific amount or say that the amount is not known or will be proven at trial.

**DATE CLAIM AROSE.** While not required, this information may be useful to both parties and the judge in deciding, for example, whether a statute of limitations has passed.

**RELIEF THAT YOU SEEK FROM THE COURT.** This section summarizes your requests. You must indicate what you are asking the court to do. If you do not ask, you will not receive.

**SIGNATURE.** Once the preceding parts are completed, sign and date the Complaint. You are not required to swear to the truthfulness of the matters stated in the Complaint except in divorce and a few other cases or where you are using the Complaint as a basis for obtaining an injunction.

## The Civil Case Cover Sheet

It lists the information required by Tennessee courts. We will discuss here the portions of the form that may need explanation. The words in CAPITAL LETTERS are the titles of sections of the document.

**ORIGIN.** The plaintiff will usually specify that the case is an “original proceeding” but it might be a “case reopened” if the case was dismissed earlier.

**TYPE OF ACTION.** You may need the assistance of the clerk. This is one of the rare instances where the clerk is permitted to help you.

**AFFIDAVIT TO PROCEED IN FORMA PAUPERIS OR COST BOND.** Specify whether you will file n **Affidavit of Indigency** (if you cannot pay court costs), a Cost Bond (if you have an attorney who will furnish it), a Cash Bond (if you will leave a cash deposit), or a Surety Bond (if an insurance company will guarantee payment of costs).

**JURY DEMAND.** Leave blank unless you are sure you know how to conduct this more complicated type of trial, rather than before the judge or chancellor alone.

**RELATED CASES.** Generally not applicable. In case of doubt, list the other case.

**TYPE OF SERVICE REQUIRED.** The answer will usually be either the “local sheriff” or “other.” In the latter case, specify that you will use another adult to serve process.

### **The Summons**

The Summons gives the defendant written notice that you have started a case. Print or type the name of the CIRCUIT or CHANCERY COURT where you are filing for divorce, along with the case number and the name of the county. Fill in the address of the defendant as well as your own (the plaintiff). Show that the Summons is to be served on your defendant at the address shown in the Complaint.

In the Summons, you may use either a home address or a work address for the defendant. If you know the defendant’s phone number or a time of day that the defendant will most likely be at that address, put that in the Summons as well. Any information you can give the Sheriff will be helpful in serving him or her.

About two weeks after the date the Complaint is filed, you should call the court clerk and ask if it has been served on the defendant. (You must give the clerk your case number!) If the deputy sheriff is successful in serving the Complaint on the defendant, he or she will fill in the back of the Summons with the date that it was served on the defendant. If the deputy is unable to locate the defendant and serve the Complaint, he or she will send the Summons back to the clerk and on the back of the Summons will indicate that the defendant is not to be found in that county.

If you know of a new address where the defendant might be found, you may send a new Summons to the clerk. Write on the top of the summons “ALIAS” which means that this is the second Summons issued in your case. Be sure and put the case number on the Summons!

### **Private Service of Process**

A copy of the Summons and the Complaint must be personally delivered to the defendant. There are many ways to serve legal papers and, for this reason, you may want to consult our separate booklet on this subject. Service by a deputy sheriff is not required though we do recommend it. One of the other methods is delivery by a person who is 18 years of age or older. We will discuss this alternative here.

You may not serve the *Summons and Complaint on the defendant yourself*. The person serving your papers should leave the papers with the defendant. If the defendant is not at home when the papers are delivered, the papers may also be served by leaving them with any other responsible person who resides with the defendant.

Once your papers have been served, the person serving them must complete the **Return of Service** that is part of the Summons. To complete this form, that person should:

- Fill in the date, time and place of service.
- Sign and date the Return of Service and *have the form verified by personally appearing before a notary public or the court clerk*.

After finishing these steps, file the original Summons with the clerk of the court and keep a copy for your records.

### **Service by Publication**

If the defendant cannot be found in order to serve him or her personally, you may serve him or her by publication. More information on this type of service is found in a separate booklet.

## **THE ANSWER**

If you are the defendant and wish to contest some or all of the matters stated in the Complaint, file your **Answer**. The Answer has several parts.

**ADMISSIONS AND DENIALS.** You should deny any statement made in the Complaint that is untrue and state that you “lack information” to admit or deny that which you do not know.

**DEFENSES.** Defenses such as lack of jurisdiction by the court or a statute of limitations may be asserted. It is not necessary to assert a defense, and only rarely is this done.

**COUNTERCLAIMS.** This is optional. If a counterclaim is filed, you must also file a **Cash Bond** that you provide, a Surety Bond furnished by an insurance company, an **Affidavit of Indigency**, or a Cost Bond signed by an attorney. A filing fee is usually required.

**REQUESTS FOR RELIEF.** State as many requests as you have.

**SIGNATURE.** Sign in the indicated place. No notary public is necessary.

**CERTIFICATE OF SERVICE.** Its purpose is to assure the court that the plaintiff is notified of your response. Similar statements are required on motions and proposed orders that are filed with the court later in the case. It can be important to comply with the requirement that you notify the plaintiff what you are asking the court to do.

## AFTER THE COMPLAINT IS FILED

### Discovery

“Discovery” is legal shorthand for obtaining information by any or all of three methods: Interrogatories, Requests for the Production of Documents, and Requests for Admissions. **Discovery Requests** are used to acquire to first two; the last of the three is used less frequently because the other party usually figures out a way to deny what you request him or her to admit.

Virtually anything is discoverable *if it can lead* to the introduction of admissible evidence at trial.

The discovery process is the most widely used method of obtaining information and preparing for a deposition or a trial. It is usually inexpensive except where there are voluminous documents. The party requesting documents is entitled to inspect them but must make and pay for its own copies. Typically, parties agree to furnish copies of documents at no charge and without production of originals.

The discovery process often takes weeks or even months longer than the 30-day period called for in the Rules of Civil Procedure because the other side responds incompletely, or not at all, and the judge typically gives more time to respond. In egregious circumstances, however, judges can impose sanctions against a party refusing to respond properly.

Vague questions often make Interrogatories unhelpful even though answers under oath are required and can be used to expose untruths and inconsistencies. Useful Interrogatories require careful planning and wording. With few exceptions, all questions must be answered; typically, the response is as brief as possible. Common (and sometimes successful) objections include the following;

- The information is privileged or subject to protection as trial preparation material.
- The information is protected by law on privacy grounds.
- The Request is not reasonably calculated to lead to the discovery of admissible evidence.
- The Interrogatory calls for disclosure of mental impressions, conclusions, opinions, or legal theories concerning this litigation.
- The Interrogatory calls for an answer that involves an opinion.

Documents frequently are invaluable proof. (“Documents” include every type of written or electronic communication.) Again, the request for them should be carefully and completely expressed so as successfully to avoid objections such as these:

- The Request seeks documents unreasonably cumulative or duplicative or that are obtainable from another source that is more convenient, less burdensome, or less expensive.
- The Request is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the resources of the Plaintiff [or Defendant], and the importance of the issues at stake in this litigation.
- The information is privileged or subject to protection as trial preparation material.
- The Plaintiff [Defendant] does not have substantial need of the documents in the preparation of the case and is able without undue hardship to obtain the substantial equivalent of the documents by other means.

Health and business records are often made the subject of a confidentiality order signed by the judge.

### **Depositions**

Depositions involve testimony prior to trial rather than before a judge. They are a common form of discovering information to be used at trial, usually on cross examination. They almost always occur before a court reporter, whom you must hire and pay if you are taking the deposition. The cost can be substantial for a person who is representing himself or herself. Occasionally, a deposition is recorded by video instead of (or in addition to) a written transcript.

Depositions usually take place in a meeting room at a lawyer's office or a conference center. Each party has the right to be present, regardless of who is the witness being deposed. No judge is present to decide what questions are improper or whose conduct is unacceptable.

With few exceptions, any question can be asked, and it must be answered. Objections are usually not required, but they are permitted so long as they are briefly stated without argumentation. Each party may cross-examine a witness being deposed by another party. All testimony is under oath.

Both "fact witnesses" and "expert witnesses" (people who are allowed to give opinions) can be deposed. Fact witnesses are not entitled to compensation; expert witnesses are.

Usually the two sides agree on the time and place for a deposition. If they cannot, one party serves a **Notice of Deposition** on the other.

Only important witnesses should be deposed. You need not depose your own witnesses; the other side will probably choose to do so. Depose someone if you think the witness will contradict himself or herself at trial or will say something you can disprove. You can then use the pre-trial testimony against the witness by having him or read a portion of the deposition at trial and then try to explain contradictions or inconsistencies.

Doctors and certain other professionals cannot be compelled to testify at trial. Instead, they may choose to give testimony only by depositions. If a witness for any party becomes unavailable to testify later at trial, his or deposition may be substituted.

## **Motions**

Virtually any matter may be brought to the attention of the judge by the filing of a motion. Some of the more common ones are:

- To compel a party to answer interrogatories or produce documents (Motion to Compel)
- To set the case for trial (**Motion to Set Date of Trial**)
- To postpone the case to a later date (**Motion to Continue**)
- To conclude the case before trial (Motion to Dismiss or Motion for Summary Judgment)
- To obtain a ruling from the court about an important point that is likely to arise during trial (Motion in Limine)

Motions are to be made in writing and filed with the court clerk a certain number of days before the date a judge is asked to rule on them. See the local rules of court for the deadline. Motions require some basis for their filing. If a rule of evidence or civil procedure is the authority, for example, it should be cited in the motion. Some motions require affidavits from witnesses to support them. Use the **Affidavit Regarding Motion** for this purpose.

Increasingly, courts require a party, prior to filing a motion, to contact the other party by telephone, in writing, or both, and to state that no agreement regarding the relief sought could be reached. Many courts also require a statement that the motion is scheduled to be heard on a specified date and time. All courts require a certificate of service, stating that the party filing the motion served a copy of it upon the other party at a specific address by personal delivery or by U.S. Mail. See the **Motion** form for these statements.

## **Injunctions**

You may request temporary relief commencing the day you file your Complaint up until the time a Final Decree is entered. To do so, you first file a **Motion for an Injunction**.

A request for an injunction asks protection for you or your property. It may require someone to stop doing something or, less commonly, to do something. The relief provided in any **Injunction** is not final. It does not determine what the Final Decree will say about any matter that is going to be decided at a later hearing. It may be revoked, modified, or terminated by the court upon a motion by either party. It usually terminates when a Final Decree is entered or the case is dismissed.

When you seek an injunction, you must:

- Set forth your requests in writing. (*Note:* If you have stated *under oath* in the Complaint that the behavior of the Defendant merits an injunction, you may proceed on an emergency basis without filing a separate motion.)
- Obtain a hearing date from the clerk of the court. (*Exception:* emergency relief may be sought from a judge in his or her office when the Complaint is actually filed -- or soon thereafter in some counties – with the clerk.)
- File the motion with the clerk of the court.
- Furnish a copy of the motion to the defendant in advance of the hearing. (This not necessary if you are requesting an injunction on an emergency basis.)
- Call the clerk of the court to confirm the date of the hearing. (*Important:* check the court’s local rules for any deadlines for the filing of a reply by the defendant.)
- Attend the hearing.
- Give the court the form for the injunction that you request.

You generally will need the following forms:

- **Motion for an Injunction**
- **Affidavit in Support of Motion**
- **Injunction**

### **Subpoenas**

A subpoena is a court order telling a person to come to court on a certain day and testify. A subpoenaed witness who does not come to court can be punished by the court.

A subpoena can also be a court order to produce documents (for example, from a telephone company if you need records of telephone calls made) *at or before* trial. It can be combined with a subpoena to testify at trial.

You get subpoenas from the court clerk. There is a fee for the subpoena and it must be paid before the subpoena is issued. You may be able to avoid paying this fee if your Affidavit of Indigency is approved. The subpoena will be delivered to the witness by a deputy sheriff or a private process server.

See our separate booklet on subpoenas for more details.

## **THE TRIAL**

*Step 1: Get a Date.*

File a **Motion** to set the case for a hearing. Read the local rules of court to determine when the motion will be heard by the judge or chancellor. On that date, the court will set a later date for the hearing itself. Tell the judge or chancellor that you and the other party have *not*

reached agreement. The court will need to make sure there is ample time for your case to be heard.

*Step 2: Prepare for the Trial.*

Look up the court's local rules about when subpoenas must be served on witnesses and when you must furnish to the defendant your list of witnesses and exhibits. (Ten days before the hearing is a common period.) Then use the forms for **Subpoenas** and the **List of Witnesses and Exhibits**. Make sure they are filed with the clerk's office as well as served upon the witnesses or given to the defendant. *Hire a court reporter* if you think there may be a dispute about what the court orders or an appeal to a higher court. The court does not hire or pay for the reporter.

If you are very sure your witness will show up, you may only have to tell them the date of the trial. If you are not sure that they will show up or if you do not want the trial to go on unless the witness is there to testify, you may want to have your witnesses subpoenaed.

Get everything ready before you go to your trial. Gather all the papers supporting your side of the case. Decide who you want to call as a witness and what you will ask them. Remember if you don't understand what you want to say, neither will the judge.

If you are the plaintiff and for some reason you change your mind about bringing this suit, you can dismiss it (end it) without hurting your chances to bring it up again later. You can only do this twice, however. After that, the court will decide you have lost the case and you cannot bring suit on that case again.

*Step 3: Wait Your Turn.*

At the trial, let the courtroom clerk know that you are ready. The clerk will call your name when the judge or chancellor is ready to hear your case. There usually are several cases scheduled at the same time, some of which may be compromised at the last moment. While you will have to wait if there are cases ahead of you, the clerk may be able to tell you and the witnesses approximately how long it will be.

*Step 4: Present Your Case.*

The judge or an official of the court will have you, the other party, and all of the witnesses raise your right hands and swear an oath to tell the truth. Usually, the witnesses will then be excused so that they cannot hear anyone else testify. If you have hired a court reporter, he or she should be in place and ready to transcribe.

The plaintiff has the right to call the first witness, and this will usually be the plaintiff herself or himself. But it can be someone else, even the defendant. The plaintiff's other witnesses are next, followed by the defendant and his or her witnesses.

The person calling a witness has the right to question him or her, and then the other side has the right to cross-examine.

It is important that the trial cover at least the following points:

- There is no reason why the court cannot decide the case. In other words, all legal papers have been properly served; the case is in the right court; and both parties are present in person or otherwise properly before the court.
- The facts that you rely on.
- The legal basis – such as the violation of a statute – for your claim.
- The reason that you should win.
- The legal relief that you should be granted, as requested in your Complaint or Answer.
- The attorney fees and court costs should be paid in the manner you want.

## **THE FINAL DECREE**

When the judge has reached a decision, he or she will announce a decision, usually orally but sometimes in writing. The judge will often ask one of the two parties to prepare a proposed **Final Decree** and to present it to the other party for comment in light of the court's ruling.

If you and the other party cannot agree on how the Final Decree should be signed by the judge, each of you may present a separate version of it. The judge will then decide which version to sign or will prepare his or her own documents. (Local rules usually say more about how proposed orders are to be filed.)

Your case is usually over when the judge signs the Final Decree. Sometimes the judge or chancellor will sign a decree that is retroactive to the date of the trial. In any case, there may be an appeal. When you submit a proposed Final Decree, do not fill in the date. The judge or chancellor will do so and will decide whether to make the judgment retroactive.

## **AFTER THE TRIAL**

When you have completed the trial, both parties should obtain a certified copy of the Final Decree.

If you are the plaintiff and you win the lawsuit, the court may award you a money judgment plus any court costs you have paid. You will have to try and collect the money from the defendant. The court is not a collection agency; it will not get the money for you.

If you are the defendant and you win the lawsuit, you do not have to take other action. But you might want to check your credit report to make sure the lawsuit is not mentioned.

If you are the defendant and you lose the lawsuit, the plaintiff probably will fill out papers at the court clerk's office to collect on the judgment. If the plaintiff knows where you work, the plaintiff may try to garnish your wages. Or the plaintiff may be able to have some of your property seized and sold at an auction held by a deputy of the court. The money of the sale will then be paid to the plaintiff to satisfy the judgment.

## APPEALS

In the rare case when you want to appeal, you must first file a **Notice of Appeal** with the trial court clerk no later than 30 days after the judge or chancellor signs the Final Decree. Then consult the Tennessee Rules of Appellate Procedure at this Internet address: [www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/appellateproindex.htm](http://www.tsc.state.tn.us/opinions/tsc/rules/TNrulesofcourt/appellateproindex.htm). Be sure that you have a copy of the transcript from the court reporter.

This booklet does not discuss the process for appeals. You probably should consult a lawyer, if only for obtaining general guidance about what to do yourself. Judges and clerks may not give you legal advice or assist you with your paperwork for an appeal.

*Adapted from a booklet of the Northwest Justice Project.*