

**LOCAL RULES OF CRIMINAL PRACTICE IN**  
**THE CRIMINAL AND CIRCUIT COURTS**  
**SECOND JUDICIAL DISTRICT**  
**SULLIVAN COUNTY, TENNESSEE**

Effective July 1, 2010

**CLERK OF THE COURT**

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Circuit Court Clerk  
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## **Adoption of Local Rules**

The following rules of local criminal practice govern the rules of procedure in all of the Circuit and Criminal Courts in Sullivan County, Second Judicial District, for all criminal matters in those courts and shall become effective July 1, 2010, and expressly repeal all local rules previously adopted.

All court-related personnel may not interpret any rules of procedure or give any legal advice. All court-related personnel assume no responsibility for any misinformation regarding substantive law, procedural rules, local rules or local customs.

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Robert H. Montgomery, Jr.  
Criminal Court Judge  
P.O. Box 585  
Blountville, TN 37617

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R. Jerry Beck  
Circuit Court Judge, Part II  
P.O. Box 585  
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John S. McLellan III  
Circuit Court Judge, Part I  
225 West Center Street  
Kingsport, TN 37660

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E. G. Moody  
Chancellor  
801 Anderson Street  
Bristol, TN 37620

**LOCAL RULES OF CRIMINAL PRACTICE**  
**SECOND JUDICIAL DISTRICT**  
**SULLIVAN COUNTY, TENNESSEE**

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**RULE 1. RULES OF COURT: APPLICABILITY AND SUSPENSION**

**Sec. 1.01. Former Rules Abrogated**

All former rules of local practice except as readopted in these Rules are abrogated.

**Sec. 1.02. Applicability**

Each rule is applicable in all Criminal and Circuit Courts (herein Court) exercising criminal jurisdiction in Sullivan County, Second Judicial District.

**Sec. 1.03. Suspension of Rules**

Whenever the judge presiding in any Court (herein Judge) determines that justice requires it, the Judge may suspend any of these rules.

**RULE 2.    COURT SESSIONS**

**Regular session of Court will open at 9:00 a.m., or at such other time as the Judge directs. Attorneys shall be prompt at all sessions.**

### **RULE 3. APPEARANCE AND CONDUCT OF COUNSEL**

#### **Sec. 3.01. Counsel of Record; Entry of Appearance**

Any attorney who has entered an appearance in a case will be counsel of record and may not withdraw without leave of the Judge. Entry of an appearance shall be made in one of the following ways:

- (1) A request by an attorney to the Sullivan County Circuit Court Clerk (herein Clerk) that an appearance by the attorney be entered;
- (2) The filing of pleadings;
- (3) The filing of a formal notice of appearance; or
- (4) Appearance as counsel at appearance day or arraignment.

With leave of the Judge, an attorney may appear for the limited purpose of filing and presenting a motion for the setting or reduction of bond.

All attorneys who have been licensed to practice law in the State of Tennessee and who possess a current registration card issued by the Board of Professional Responsibility shall automatically be eligible to practice law in Court. Upon making an appearance in Court for the first time, an attorney shall be formally introduced to the Judge.

Attorneys not admitted to the practice of law in the State of Tennessee, but who are currently licensed to practice law and in good standing in another state, and / or who do not have an office in this state, shall comply with Tennessee Supreme Court Rules 19 and 20 before making any appearance and, upon compliance, may appear as the Judge directs.

#### **Sec. 3.02 Withdrawal and Substitution of Counsel**

No attorney may be allowed to withdraw and / or another attorney substituted as counsel except for good cause shown and by approval of the Judge upon motion filed by the

**appropriate attorney. Failure of consideration of an employment contract shall not, in and of itself, constitute good cause for withdrawal.**

**Sec. 3.03      Conduct of Counsel**

**The following shall apply to the conduct of counsel:**

- (a)      The space within the bar of the courtroom is reserved for parties engaged in the case on trial, the parties' respective attorneys, and court officials.**

**Spectators and prospective jurors and witnesses shall be seated outside the bar in the general seating area. Other individuals necessary to assist counsel at trial may be allowed to be seated in front of the bar with permission of the Judge, and only during the time when an attorney needs assistance.**
- (b)      During trial, counsel shall not exhibit familiarity with witnesses, jurors, or opposing counsel, and the use of first names for adults shall be avoided.**

**During opening statement or argument, no juror shall be addressed individually by name.**
- (c)      Attorneys shall not approach the bench without approval of the Judge.**

**Bench conferences should be requested only when absolutely necessary in aid of a fair trial. No attorney shall lean upon the bench nor appear to engage the Judge in conversation in a confidential manner without the presence of opposing counsel.**
- (d)      Attorneys should refrain from interrupting the Judge or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect the client's interests. Attorneys should respectfully await the completion of the Judge's statement or opinion before undertaking**

**to point out objectionable matters. When an objection is made to a question asked, counsel should refrain from asking the witness another question until the Judge has had an opportunity to rule upon the objection. Objecting counsel shall state the legal grounds and / or cite to the appropriate rule without argument or discussion except by leave of the Judge.**

- (e) Attorneys and pro se parties shall stand while examining witnesses, or addressing the jury or the Judge, unless otherwise approved by the Judge. Attorneys who are examining a witness or addressing the jury shall not approach the witness or the jury without permission of the Judge.**
- (f) All attorneys are required to wear appropriate business attire during any appearance before the Judge while Court is in session. Defendants, witnesses and spectators must wear appropriate clothing. Shorts, swim suits, leotards, tank tops, muscle shirts, hats or caps (other than religious coverings), bare feet, or other inappropriate attire are not permitted in the courtroom.**
- (g) There shall be no use of food, drink or tobacco products in the courtroom. No books or newspapers shall be read in the courtroom while Court is in session. Cell phones and other electronic devices are not permitted outside the bar in the general seating area and shall not be used in the courtroom. However, electronic devices, other than cell phones, may be used by those individuals within the bar when necessary and when the use does not disrupt any court proceedings. No video or audio recording may be made in the courtroom unless the Judge grants prior permission.**
- (h) No attorneys, parties, or any other person having any interest in a case set**



**for trial shall engage in any conversation with any juror serving in that Court until the juror's term of service has ended, except with permission of the Judge.**

#### **RULE 4.    ASSIGNMENT OF CASES**

All criminal matters filed shall be assigned randomly by the Clerk to the Criminal Court Judge or to the Circuit Court Judge, Part II, pursuant to an order entered July 24, 1984, as may be amended from time to time, and as authorized by Tennessee Code Annotated, Section 16-2-509.

The Criminal Court Judge shall be assigned two of every three criminal and U.R.E.S.A. cases filed.

The Circuit Court Judge, Part II, shall be assigned one of every three criminal and U.R.E.S.A. cases filed, and one of every five cases filed in the Law and Chancery Courts in Kingsport and Bristol, but not to include any civil jury cases.

Cases assigned to any Judge shall be heard by that Judge unless there is a recusal by the assigned Judge. Judges may mutually agree to hear criminal matters by interchange. If the assigned Judge is not available, a Judge, by interchange, may order a capias and set a bond for a presentment from the Grand Jury or for a warrant for a violation of probation or community corrections.

## **RULE 5.    DOCKET CALL**

Each Judge hearing criminal matters will call the docket for all open criminal cases assigned to the Judge's Court on the first Tuesday after the first Monday in September at 1:30 p.m. for the purpose of determining the status of all cases for which a specific future date to appear in Court is not currently set.

## **RULE 6. APPEARANCE DAY**

### **Sec. 6.01. Notification**

Each defendant who has a case bound over to the Grand Jury or appeals to Court from any lower court shall appear in Court at a time and date fixed by a schedule set by the Criminal Court Judge. Each defendant shall be advised of such appearance day by the judge of the lower court from which defendant is bound over or from which the defendant appeals.

Any defendant who is arrested by capias, and who is not appealing or being bound over from some lower court, shall be advised by the Sullivan County Sheriff (herein Sheriff) or Clerk, as the case may be, of the next succeeding appearance day after arrest, and directed to appear on that date at the taking of the bail bond.

Any defendant who is in custody and unable to make bond after being bound over to the Grand Jury, or after appealing a case from any lower court, or after having been arrested by capias shall be brought by the Sheriff before the Judge in whose court the case is assigned on the next scheduled appearance day after it is determined by the Judge that the defendant will not post bond, or at such earlier date as directed by the Judge.

### **Sec. 6.02. Designation of Appearance Days**

The appearance days for the calendar year will be designated by a schedule set by the Criminal Court Judge, in advance, for each calendar year. The Clerk shall provide a copy of such designated days to each clerk and judge of each General Sessions Court and Juvenile Court in Sullivan County and to the Sheriff.

**Sec. 6.03.      Court Action**

**A defendant shall appear in person and with counsel, if represented by counsel, on the appearance day unless a continuance is granted. Requests for appointed counsel and determination of indigency shall be heard and action taken on the request on the appearance day. Defendants represented by counsel may be arraigned and may have a trial date set on the appearance day. In the event that a defendant wishes to plead guilty or nolo contendere, such plea may also be heard on the appearance day.**

**Sec. 6.04.      Continuance of Appearance**

**A continuance of the initial appearance for a defendant represented by an attorney, without appearing in Court, may be made by oral or written request and shall be granted by the Judge without formal hearing with the agreement of both parties and the Judge's Assistant. Such a continuance may be for a reasonable time with good cause shown. A continuance will be granted as a matter of course when a defendant has not been indicted in a case and an indictment or presentment is required for further proceedings. The defendant must sign a written acknowledgement of the new court date. The acknowledgement shall be filed in the Clerk's file.**

**RULE 7.    INCLEMENT WEATHER**

**There will be no jury trial in Blountville if either the City of Kingsport or the City of Bristol School System is closed due to inclement weather. The Judge will attempt to hold court for all non-jury trial matters as scheduled, unless Sullivan County government offices are closed by the County Mayor due to inclement weather. However, no party or attorney will be penalized for being late or being unable to appear due to inclement weather.**

## **RULE 8.    ARRAIGNMENT**

### **Sec. 8.01        Notification**

Arraignment may be held on the appearance day or some other day fixed by the Judge at the time of appearance.

### **Sec. 8.02        Entry of Plea**

At the time of arraignment, a defendant is required to enter a plea to the charge against the defendant, unless the defendant is requesting pre-trial diversion.

### **Sec. 8.03        Continuance of Arraignment**

Continuance of an arraignment may be obtained in the same manner as a continuance of appearance.

### **Sec. 8.04        Waiver of Arraignment**

A defendant may not waive arraignment, but must appear in person for arraignment.

## **RULE 9.     SETTING CASES FOR TRIAL AND CONTINUANCES**

### **Sec. 9.01.     Method of Setting**

Cases shall be set for trial by the Judge on the arraignment date or such later date as the Judge may determine may be appropriate for the efficient administration of the Court.

### **Sec. 9.02.     Order of Trial**

The Judge shall set such number of cases as may be required by the Court's docket and the type of case on each jury trial date. Each case scheduled shall be prepared for trial on the date it is scheduled. When more than one case is set for trial on the trial date, the Judge shall try such cases in such order as the Judge may determine, based upon all legal and practical considerations.

### **Sec. 9.03.     Continuances**

After a case has been set for trial it will not be continued except for good cause shown which shall be brought to the attention of the Judge by a sworn written motion as soon as practicable before the date of the trial. No case set for trial may be continued by agreement of the parties. Continuances will be granted only in open court, or by written order.

When a defendant is released on a bond, a continuance of an appearance for motions, sentencing, announcement, or other similar matters may be granted by the Judge, without hearing, with the agreement of both parties and the Judge's Assistant. The defendant must sign a written acknowledgement of the new court date. The acknowledgement shall be filed with the Clerk.



## **RULE 10. MOTIONS AND NOTICES**

### **Sec. 10.1. Time for Filing**

All motions and notices, except as otherwise provided in these Rules or by order of the Judge, shall be filed within the time required by law or without unnecessary delay after the cause or reason arises so as not to cause a continuance of any trial date or hearing date. Service on opposing party of any motion or notice shall be done in accordance with Rule 49 of the Tennessee Rules of Criminal Procedure or as otherwise provided in these Rules. Counsel shall also provide to the Judge a copy of any motion to be heard. If a motion date is set by the Judge, the attorney shall file any motion to be heard and provide a copy of the motion to opposing counsel and the Judge at least 10 days before the motion date. Any motion by a party to set, reduce or increase bond must be in writing and filed with the Clerk.

### **Sec. 10.2. Docketing Motions**

It is the duty of the party filing any motion to request, in writing, docketing of that motion and to contact the Judge's Assistant to set the matter for hearing. Failure of the moving party to request timely hearing of any motion filed may constitute waiver of the motion. The Court shall determine in each case whether the interests of justice require the finding that a motion has been waived if there has not been a timely hearing.

### **Sec. 10.3. Pro Se Motions**

Any pro se motion filed by a defendant who is represented by counsel shall not be considered by the Judge unless the motion raises an issue regarding the representation of the defendant by counsel.

## **RULE 11. PRE-TRIAL DIVERSION AND JUDICIAL DEFERRAL**

Motions for pre-trial diversion shall be made before a defendant is arraigned and a trial date set. It is the responsibility of the attorney for any defendant to notify the Office of the District Attorney General of any request for pre-trial diversion or judicial deferral of judgment in order that the District Attorney General may obtain any Tennessee Bureau of Investigation certificate of eligibility that is required by law.

## **RULE 12. DISCOVERY**

### **Sec. 12.01. Generally**

Discovery in criminal cases shall be governed by the Tennessee Rules of Criminal Procedure. Where not specifically provided for by the Rules of Criminal Procedure, the following discovery rules shall apply:

### **Sec. 12.02. Time for Request**

All requests for discovery shall be filed in writing within 30 days of arraignment. Failure to file for discovery shall not be a basis for the granting of a continuance in a criminal matter. In each case in which discovery is requested, the Office of the District Attorney General shall file a response certifying that it has complied with any discovery requested pursuant to Rule 16 of the Rules of Criminal Procedure. All requests for discovery and response to discovery shall be made without unnecessary delay after arraignment or after defendant's request, unless otherwise directed by the Judge.

### **Sec. 12.03. Unnecessary Delay**

When either party has unnecessarily delayed filing discovery requests or responses to discovery, the Judge may, if it finds that the administration of justice requires, either declare that the request has been waived, order immediate specific compliance, or order broad general compliance.

### **Sec. 12.04. Motion to Compel**

Motions to compel discovery must be filed timely so as not to cause a continuance of a trial date. It is the duty of the party filing such motion to request docketing of that motion.

### **RULE 13. PLEA NEGOTIATIONS**

**Parties are encouraged to explore plea negotiations and other negotiations before cases are set for trial. Counsel may continue to negotiate after such trial setting except where specifically prohibited by the Judge. Unless the Judge has specifically prohibited further plea negotiations, counsel shall notify the Judge on the last work day before the trial date of the status of plea bargaining and of any other factor which may cause a continuance of the trial. Provided, however, such contacts with the Judge shall be made in the presence of, or by permission of, opposing counsel. If there is no plea agreement on the last work day before trial, plea bargaining may continue only by permission of the Judge.**

#### **RULE 14. CONTACTING THE JUDGE**

**No attorney, defendant, prosecutor or witness to a pending matter shall contact a Judge about that matter, except as provided by law or these Rules. All ex parte communication made to the Judge about a pending matter, unless otherwise protected by law, shall be filed with the Clerk and made a public record. The Judge may consider the communication when a party presents an issue predicated upon the communication.**

## **RULE 15. GRAND JURY**

**The Criminal Court Judge shall impanel a Sullivan County Grand Jury for a six-month period, twice a year, to serve from September through the next February, and from March through August. The members of the Grand Jury venire shall be drawn from a regular jury venire that has been summonsed to the Criminal Court for the months of March and September.**

## **RULE 16. FURLOUGHS**

The Court is vested with jurisdiction to grant furloughs in certain cases by Tennessee Code Annotated, Section 40-35-316. No furlough will be granted either orally or in writing except as follows:

1. The petitioner has been convicted of a probatable offense.
2. A petition is filed with the Clerk, either pro-se or by counsel, and such petition is docketed on a regularly scheduled court non-jury day.
3. Notice of such petition is given to the District Attorney General at the time of filing and before hearing.
4. Good cause is shown for granting such extraordinary relief.

The Judge may dispense with a hearing if the District Attorney General and the attorney for petitioner waive the hearing and agree to a disposition by the Judge. The Judge has sole discretion in the granting of a furlough.

The Sheriff possesses the power and authority to establish procedures for transporting prisoners under guard to hospitals, funerals or other locations for personal or family emergencies.

## **RULE 17. BONDS AND BONDING COMPANIES**

The local orders for operation for bonding companies operating in Sullivan County and adopted on March 1, 1995, by the Criminal Court Judge remain in effect and are not changed by the adoption of these Rules.