



LEGISLATIVE LIAISON COMMITTEE

AUGUST 2, 2021

AGENDA

TIME: 1:00 p.m.

LOCATION: City Hall Conference Room
1 Public Square, 4th Floor

- 1) CALL TO ORDER
- 2) ATTENDANCE
- 3) ADOPTION OF MINUTES: July 26
- 4) TOPICS FOR DISCUSSION AND CONSIDERATION
 1. Open Records *Laurie Matta*
 2. Cannabis *Councilperson Reynolds, Councilperson Butler*
 3. Award of Attorney Fees *Lance Baker*
- 5) ADJOURNMENT

OPEN RECORDS

There is a loophole in the law that costs the City significant time and money necessary to redact records and we have no way to recoup the money if the citizen just wants to come view the records. We should be able to charge if any city time is necessary to prepare the records. Also, in Florida there was a nuisance clause that allowed cities to deny record requests if it was an unnecessary burden on the taxpayers due to excessive requests.



LEGISLATIVE LIAISON COMMITTEE

JULY 26, 2021

MINUTES

TIME: 1:00 p.m.

LOCATION: City Hall Conference Room

1) **CALL TO ORDER:** The meeting was called to order at 1:00 pm.

2) **ATTENDANCE:**

PRESENT: Stacey Streetman, Chairperson (Ward 10), Ashlee Evans (Ward 11), Travis Holleman (Ward 7), Wanda Smith (Ward 6)

ALSO PRESENT: Mayor Pitts, David Shepard, Jeff Tyndall, Stan Williams

3) **ADOPTION OF MINUTES**

Councilperson Smith made a motion to adopt the minutes as presented. Councilperson Evans seconded the motion. The motion to adopt the minutes passed without objection.

4) **TOPICS FOR DISCUSSION AND CONSIDERATION**

Funding options for historic and downtown structure repairs was moved to the end of the agenda, with no objections, to be discussed after Mr. Tyndall arrived.

1. Transportation Projects *David Shepard, Stan Williams*

- 2021 Transportation/Road Projects: (Mr. Williams will provide wording and updates for this year's requests)
 - Add two additional lanes, both east and west, to the I-24 corridor between Clarksville-Montgomery County & Metropolitan Nashville/Davidson County
 - Widen Rossview Rd. (SR237) from I-24 to Warfield Blvd. (SR374) with curb and gutters
 - Widen Highway 41-A Bypass (SR12) to four lanes plus a center turn lane from Dr. Martin Luther King, Jr. Parkway (SR76) to Riverside Dr. (SR12-13)
 - Obligate PE-Design funding in FY20-23 TIP for SR48/Trenton Rd. (SR374/101st Pkwy to I-24)
 - Obligate PE-NEPA funding in FY20-23 TIP for widening of I-24 from Kentucky state line to SR76/Exit 11
 - Obligate PE-Design funding in FY-20-23 TIP for extension of SR374 (Dotsonville Rd. to SR149)
 - Obligate PE-Design funding for FY20-23 TIP for extension of SR374 (Dotsonville Rd. to UR79/SR76/Dover Rd.)
 - Issue construction bids for sidewalks, service roads, Denny Lane, and SR76 intersections in Spring 2021
- Mr. Williams shared the three main steps of a project, explaining that many projects occur in phases and are recurring projects :
 - Technical reports - looks at existing traffic; accidents, level of congestion increases, then a projection of the impact, ie: how much will this help.
 - If TDOT agrees, then hire environmental, right of way acquisitions
 - Final step is construction
- Chair Streetman asked about adding crosswalks to the sidewalks on Madison to this year's request. Mr. Williams suggested the Committee not include and allow the Streets Dept. to work on this project at a lower level.
- The Mayor suggested that maps of projects/concept plans be shared when presented to Council.
- Chair Streetman suggested adding pedestrian overpasses over College St. at APSU or add crosswalks. Suggestion was to pick one key location that will make the most impact.

2. Funding options for historic and downtown structure repairs *Jeff Tyndall*

- How can the state assist owners or buyers make needed improvements so that the building does not end up demolished. There are some smaller funding options available but need to come up with a way to fund larger expenses/projects.
- Limited grant dollars available - entire state competes for those dollars. Look at the possibility of low interest loans, reimbursement options from the State, tax aversions.
- Jeff to reach out to the THC for ideas and list of grants and will provide a list of incentive plans already available and a gap analysis.
- Councilmember Holleman asked if building constraints and standards are too high regarding materials. Mr. Tyndall will provide a list of different materials and costs but said there is not much difference in material costs. The larger expenses included things such as shoring up brick walls and larger structural improvements.

*Chair Streetman reminded the committee that these meetings are to go over all topics and then come back as a committee to determine and vote on which five main topics will be included on the agenda and which will be added as wish list items to be given to Council to vote on.

5) ADJOURNMENT

The meeting was adjourned at 1:47 pm.

RESOLUTION 58-2020-21

A RESOLUTION SUPPORTING THE DECRIMINALIZATION OF OF SIMPLE POSSESSION OR CASUAL EXCHANGE OF MARIJUANA FOR PERSONAL USE

WHEREAS, the City Council finds that as a country, the United States spends billions of dollars each year enforcing marijuana laws; and

WHEREAS, the City Council finds this enforcement has not had an impact on marijuana usage and has created additional costs for communities and individuals; and

WHEREAS, the City Council finds that an arrest for possession of marijuana can have an impact on housing, student loans, future employment, child custody determinations, and many other circumstances; and

WHEREAS, the City Council finds that data from the American Civil Liberties Union (ACLU) shows that marijuana usage is roughly equal among whites and blacks in the United States, but blacks are 3.64 times more likely to be arrested for marijuana possession as whites; and

WHEREAS, the City Council finds that according to a 2018 ACLU report the state of Tennessee was 9th highest in marijuana possession arrests per 100,000 people with blacks being four times more likely to be arrested than whites.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE, as follows:

1. The City Council hereby expresses the sense of the City Council in opposition to the criminalization of marijuana possession in small amounts by users, and further expresses its' desire that enforcement of criminal laws for simple possession or casual exchange of marijuana for personal use (see Tennessee Code Annotated §39-17-418) should be the lowest enforcement priority for the City of Clarksville Police Department; and
2. The City Council hereby expresses the sense of the City Council by requesting that the District Attorney General for the 19th Judicial District take an active stance or position of not prosecuting persons for simple possession or casual exchange of marijuana for personal use; and
3. The City Council hereby expresses the sense of the City Council by requesting the Tennessee General Assembly to pass legislation to decriminalize simple possession or casual exchange of marijuana for personal use (repealing TCA §39-17-418); and requests the members of the local state delegation to the General Assembly to introduce and promote such legislation, and actively work to have such legislation approved.

REFERRED:

March 4, 2021, to Legislative Liaison Committee

City of Clarksville Request for Legislation to Amend Tennessee Code Annotated (TCA) Section 20-12-119 to Permit Trial Courts to Award State and Local Governments Attorney Fees (Capped at \$10,000 in current state law) When Lawsuits Are Dismissed Pursuant to Rule 12 of the Tennessee Rules of Civil Procedure

Often times, state and local governments, elected and appointed officials, and employees are sued in state court where the claims are frivolous or lack any real merit. These lawsuits cost a tremendous amount of time and money, paid by taxpayers, to defend against. Many times these lawsuits are defeated and dismissed based upon Rule 12 of the Tennessee Rules of Civil Procedure, for failure of the plaintiff to state a claim upon which relief can be granted. (See attached Rule 12, Tenn. R. Civ. P.) In such cases, the court can award court costs, and discretionary costs, but not attorney fees, except pursuant to Tennessee Code Annotated Section 20-12-119.

That sub-section (c) of Section 20-12-119 states that in civil cases “where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable attorney’s fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.” (See attached Tenn. Code Ann. Section 20-12-119 (c))

However, subsection (c)(5) of Section 20-12-119 provides that “subsection (c) shall not apply to: (A) Actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law;”

Because of the large number of meritless lawsuits and claims that are filed against the state and local governments, and public officials and employees, that are dismissed pursuant to Rule 12 of the Tenn. R. Civ. P. for failure to state a claim upon which relief may be granted, and because of the consequent costs both in terms of time and money, born by taxpayers, to defend against such lawsuits, it is submitted that subsection (c)(5)(A) of Section 20-12-119 should be deleted in its entirety. Deletion of this portion of this specific subsection would then permit a trial court to award attorney fees, with an existing cap of \$10,000 pursuant to subsection (c)((4), to the state, or local governments in connection with the Rule 12 dismissal of claims or lawsuits.

TENNESSEE RULES OF CIVIL PROCEDURE

Effective January 1, 1971

Including Amendments Received Through
July 15, 2020

Research Note

See Rules of Civil Procedure Annotated, 4th (Tennessee Practice, volumes 3 and 4), for a comprehensive treatment of practice and procedure under these Rules. Procedural forms for use in civil cases are set forth in Civil Procedure Forms, 3rd (Tennessee Practice, volumes 5 and 6).

Table of Rules

Rule 1. Scope of Rules	Rule 6. Time
Rule 2. One Form of Action	6.01. Computation.
Rule 3. Commencement of Action	Rule 7. Pleadings Allowed; Form of Motions
Rule 3A. Enforcement of Foreign Judgments	7.01. Pleadings.
Rule	7.02. Motions and Other Papers.
3A.01. Enrollment of Foreign Judgments.	7.03. Demurrers, Pleas, etc., Abolished.
3A.02. Notice of Filing.	Rule 8. General Rules of Pleading
3A.03. Clerk's Duties.	8.01. Claims for Relief.
3A.04. Enrollment and Execution.	8.02. Defenses; Form of Denials.
Rule 4. Process	8.03. Affirmative Defenses.
4.01. Summons; Issuance; By Whom Served; Sanction for Delay.	8.04. Effect of Failure to Deny.
4.02. Summons; Form.	8.05. Pleading to be Concise and Direct; Statutes; Ordinances and Regulations; Consistency.
4.03. Summons; Return.	8.06. Construction of Pleadings.
4.04. Service Upon Defendants Within the State.	Rule 9. Pleading Special Matters
4.05. Service Upon Defendant Outside This State.	9.01. Capacity.
4.06. [Reserved].	9.02. Fraud, Mistake, Condition of the Mind.
4.07. Waiver of Service; Duty to Save Costs of Service; Request to Waive.	9.03. Conditions Precedent.
4.08. Constructive Service.	9.04. Official Document or Act.
4.09. Amendment.	9.05. Judgment.
Rule 4A. Service Upon Defendant in a Foreign Country	9.06. Time and Place.
Rule 4B. Service Upon Secretary of State as Agent for Service of Process	9.07. Special Damage.
Rule 5. Service and Filing of Pleadings and Other Papers	Rule 9A. Petition for Termination of Parental Rights; Content of Petition
5.01. Service; When Required.	Rule 10. Form of Pleadings
5.02. Service; How Made.	10.01. Caption; Names of Parties.
5.03. Service; Proof of.	10.02. Paragraphs; Separate Statements.
5.04. Service; Numerous Defendants.	10.03. Exhibits.
5.05. Filing.	10.04. Adoption by Reference.
5.06. Filing With the Court Defined.	Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions
Rule 5A. Facsimile Filing of Papers	11.01. Signature.
5A.01. Definitions.	11.02. Representations to Court.
5A.02. Filing Procedures.	11.03. Sanctions.
5A.03. Effect of Facsimile Filing.	11.04. Inapplicability to Discovery.
5A.04. Facsimile Service Chargé.	
Rule 5B. Electronic Filing, Signing, or Verification	
Rule 6. Time	

belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denial of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

[Amended effective August 1, 1987; July 1, 1995.]

Rule 11.03. Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that subdivision 11.02 has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision 11.02 or are responsible for the violation.

(1) How Initiated.

(a) *By Motion.* A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision 11.02. It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible

for violations committed by its partners, associates, and employees.

(b) *On Court's Initiative.* On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision 11.02 and directing an attorney, law firm, or party to show cause why it has not violated subdivision 11.02 with respect thereto.

(2) *Nature of Sanctions; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (a) and (b), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(a) Monetary sanctions may not be awarded against a represented party for a violation of subdivision 11.02(2).

(b) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

[Amended effective August 1, 1987; July 1, 1995; July 1, 2003.]

Advisory Commission Comment to 2003 Amendment

A spelling error is corrected in Rule 11.03(2); there is no substantive change.

Rule 11.04. Inapplicability to Discovery

Subdivisions 11.01 through 11.03 of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

[Amended effective August 1, 1987; July 1, 1995.]

Rule 12. Defenses and Objections: When and How Presented: by Pleading or Motion: Motions for Judgment on Pleadings

Rule 12.01. When Presented

A defendant shall serve an answer within 30 days after the service of the summons and complaint upon the defendant. A party served with a pleading stating a cross-claim against such party shall serve an answer thereto within 30 days after the service upon him or her. The plaintiff shall serve a reply to a counterclaim in the answer within 30 days after service of the answer, or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the court's action; (2) if the court grants a motion for a more

definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement.

[Amended effective July 1, 1999.]

Advisory Commission Comment

Rule 12.01 requires that the defendant serve an answer within 30 days after being served with summons and complaint, and also allows the plaintiff 30 days in which to serve an answer to a counterclaim or a reply if one is required. The Rule does not change T.C.A. § 20-2-205 and T.C.A. § 20-2-215 which govern the special situation where service is had through the Secretary of State upon the personal representatives of decedents who were nonresidents or residents who were outside the state.

[Comment amended effective May 17, 2005.]

Rule 12.02. How Presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto

if one is required, except that the following defenses may at the option of the pleader be made by motion in writing: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19, and (8) specific negative averments made pursuant to Rule 9.01. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

[Amended effective July 1, 2001.]

Advisory Commission Comment

Rule 12.02 provides that certain matters may be raised as a defense by motion. These matters may, at the option of the pleader, be set out in the answer. Matters reached by motion expressly include those specific negative averments which are required by Rule 9.01 when a party wishes to raise an issue as to the legal existence of any party or the capacity to sue or be sued. The last sentence of the rule allows the parties to present matters outside the pleadings and thus to determine whether or not there exists a genuine issue which requires trial. [Comment amended effective July 1, 1993; May 17, 2005.]

Advisory Commission Comment to 2001 Amendment

This change conforms Rule 12.02(7) to revised Rule 19, under which a party is rarely "indispensable." Rule 19 presently deals with "persons to be joined if feasible." Rule 12.08 remains unchanged, because a late objection based on Rule 19 should be permitted only when a party is truly "indispensable."

Advisory Commission Comment [2014]

Effective July 1, 2012, Tennessee Code Annotated Section 20-12-119 was amended to add subsection (c) which authorizes the trial court, under certain circumstances, to award costs and reasonable and necessary attorney's fees to a party who prevails on a motion to dismiss for failure to state a claim upon which relief may be granted. Section 20-12-119(c) requires the party or parties whose claim or claims were dismissed to pay the awarded costs and fees.

Rule 12.03. Motion for Judgment on the Pleadings

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Advisory Commission Comment

Rule 12.03 provides for the filing of a motion for judgment on the pleadings. It should be noted that if matters outside the pleadings are presented to and not excluded by the court, the motion is converted by Rule 12.03 into a motion for summary judgment and is disposed of in accordance with Rule 56.

[Comment amended effective May 17, 2005.]

Rule 12.04. Preliminary Hearings

On application of any party, the defenses specifically enumerated (1) through (8) in 12.02, whether made in a pleading or by motion, and the motion for judgment mentioned in 12.03 shall be heard and determined before trial unless the court orders that the hearing and determination thereof be deferred until the trial.

Advisory Commission Comment

Rule 12.04 allows certain defenses, whether raised by pleading or on motion, and the motion for judgment on the pleadings to be disposed of in advance of trial, upon application of any party, but the judge may defer hearing and determination of these matters until the trial.

[Comment adopted effective May 17, 2005.]

Rule 12.05. Motion for More Definite Statement

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 15 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or may make such order as it deems just.

Advisory Commission Comment

Rule 12.05 provides that, if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the court on motion may direct a more specific statement. If the court grants the motion, Rule 12.05 establishes a 15-day (or otherwise as fixed by the court) limit within which the vague or ambiguous pleading must be corrected.

[Comment amended effective May 17, 2005.]

Rule 12.06. Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Advisory Commission Comment

Rule 12.06 provides for striking out insufficient defense, or redundant, immaterial, impertinent or scandalous matter. If a party wishes to make a motion to strike, the party must do so before responding to the objectionable pleading, or if no responsive pleading is permitted, within 30 days after the objectionable pleading is served on the party. No mention of costs is made in Rule 12.06, but under Rule 54.04 the court could tax costs arising from an order to strike against the offending party.

[Comment amended effective May 17, 2005.]

Rule 12.07. Consolidation of Defenses

A party who makes a motion under this rule may join it with the other motions herein provided for and then available to the party. If a party makes a motion under this rule and does not include therein all defenses and objections then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in 12.08.

Advisory Commission Comment

The pleader has the option originally not to resort to a motion, but to include all the pleader's defenses in the answer. But if the pleader by motion raises any of the defenses which can be thus raised, the pleader must at that time raise all such defenses which are available; if the pleader fails to do so he or she cannot thereafter raise these other defenses by motion. The Rule is designed to prevent serial defense by motion, with the consequent delay. Rule 12.07 is subject to the provisions of Rule 12.08 which allows certain defenses to be made even though not consolidated with an earlier motion.

Rule 12.08. Waiver of Defenses

A party waives all defenses and objections which the party does not present either by motion as hereinbefore provided, or, if the party has made no motion, in the party's answer or reply, or any amendments thereto, (provided, however, the defenses enumerated in 12.02(2), (3), (4) and (5) shall not be raised by amendment), except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, the defense of lack of capacity, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion

of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15 in the light of any evidence that may have been received.

[Amended effective July 1, 2009.]

Advisory Commission Comment

Rule 12.08 specifies that, in general, defenses not raised by motion or answer are waived, but the waiver does not apply to the defense of lack of jurisdiction over the subject matter and certain other specified defenses relating to statement of legally sufficient claim or defense, or to failure to join necessary parties. The parties cannot by waiver or otherwise confer jurisdiction over the subject matter, and the other exceptions relate to questions which should not be waived; the defects they rely upon can be remedied by amendment if facts permit, and if the facts do not permit an amendment, the defects are of such importance that the defenses based thereon should not be waivable by failure to present them at the earliest opportunity.

2009 Advisory Commission Comment

Rule 12.08 is amended to state the deadline for raising a defense of lack of capacity under Rule 9.01. This defense is found in Rule 12.02(8) by cross-reference to Rule 9.01. Lack of capacity can be raised as late as at the trial on the merits.

Rule 13. Counterclaim and Cross-Claim**Rule 13.01. Compulsory Counterclaims**

A pleading shall state as a counterclaim any claim, other than a tort claim, which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that a claim need not be stated as a counterclaim if at the time the action was commenced the claim was the subject of another pending action. This rule shall not be construed as requiring a counterclaim to be filed in any court whose jurisdiction is limited either as to subject matter or as to monetary amount so as to be unable to entertain such counterclaim.

Advisory Commission Comment

Rule 13.01 requires that a party who has a claim, other than a tort claim, which arose out of the same transaction or occurrence as the claim of the opposing party, assert the claim by way of counterclaim. Multiplicity of suits is avoided by requiring all matured claims arising between the parties out of the same transaction or occurrence to be settled in a single proceeding. Exceptions are made to protect a party against injustice. The exception of tort actions from this Rule was made because these Rules do not affect the law of venue; in tort actions, a claimant may have a legitimate choice of venue among several counties. So long as the venue laws permit such choice, the Committee felt that injustice could result from making tort claims subject to this Rule.

[Comment amended effective May 17, 2005.]

Rule 13.02. Permissive Counterclaim

A pleading may state as a counterclaim any claim against an opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

Advisory Commission Comment

Rule 13.02 is very broad and allows a party to state by way of counterclaim any claim which he or she may have against the opposing party, without regard to the source of the claim. In the event that the counterclaim should make it difficult for

the jury or court to follow the issues in a single trial, the court may order a separate trial of the counterclaim under Rule 42.02.

[Comment amended effective May 17, 2005.]

Rule 13.03. Counterclaim Exceeding Opposing Claim

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

Advisory Commission Comment

Rule 13.03 provides that a counterclaim may claim relief exceeding in amount or different in kind from the relief sought in the pleading of the opposing party. As the scope of counterclaim is greatly enlarged, it is necessary that the relief granted on a counterclaim not be limited to the same amount or kind claimed in the original complaint.

[Comment amended effective May 17, 2005.]

Rule 13.04. Counterclaim Against the State of Tennessee

These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Tennessee or an officer or agency thereof or any subdivision thereof.

Advisory Commission Comment

The right to assert claims against the State or an officer, agent, or subdivision thereof should not be enlarged by procedural rules. Accordingly, the disclaimer of Rule 13.04 is inserted.

Rule 13.05. Counterclaim Maturing or Acquired After Pleading

A claim which either matured or was acquired by the pleader after serving the pleading may, with the permission of the

West's Tennessee Code Annotated
Title 20. Civil Procedure
Chapter 12. Costs (Refs & Annos)

T. C. A. § 20-12-119

§ 20-12-119. Civil cases generally; motion to dismiss for failure to state a claim granted

Effective: July 1, 2012

Currentness

(a) In all civil cases, whether tried by a jury or before the court without a jury, the presiding judge shall have a right to adjudge the cost.

(b) In doing so, the presiding judge shall be authorized, in the presiding judge's discretion, to apportion the cost between the litigants, as in the presiding judge's opinion the equities of the case demand.

(c)(1) Notwithstanding subsection (a) or (b), in a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

(2) Costs shall include all reasonable and necessary litigation costs actually incurred due to the proceedings that resulted from the filing of the dismissed claims, including, but not limited to:

(A) Court costs;

(B) Attorneys' fees;

(C) Court reporter fees;

(D) Interpreter fees; and

(E) Guardian ad litem fees.

(3) An award of costs pursuant to this subsection (c) shall be made only after all appeals of the issue of the granting of the motion to dismiss have been exhausted and if the final outcome is the granting of the motion to dismiss. The award of costs and attorneys' fees pursuant to this section shall be stayed until a final decision which is not subject to appeal is rendered.

(4) Notwithstanding any other provision of this section, the court shall not require a party to pay costs under this section in excess of a combined total of ten thousand dollars (\$10,000) in any single lawsuit. Where multiple parties are entitled to recover their costs from a single party under this section and those parties' combined actual costs under this section exceed ten thousand dollars (\$10,000), then the court shall apportion the awarded costs to the moving parties in proportion to the amount of each moving party's incurred costs unless agreed otherwise by the moving parties. Nothing in this section shall be construed to limit the award of costs as provided for in other sections of the code or at common law.

(5) This subsection (c) shall not apply to:

(A) Actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law;

(B) Any claim that is dismissed by the granting of a motion to dismiss that was filed more than sixty (60) days after the moving party received service of the latest complaint, counter-complaint or cross-complaint in which that dismissed claim was made;

(C) Any claim that the party against whom the motion to dismiss was filed withdrew, or in good faith amended to state a claim upon which relief may be granted; however, this subdivision (c)(5)(C) shall not apply unless a pleading providing notice of the withdrawal or amendment was filed with the court and delivered to the opposing party or parties at least three (3) days before the date set for the hearing of the motion to dismiss or by the deadline for the filing of a response to the motion to dismiss, whichever is earlier. Nothing in this section shall be construed to prevent a party from striking its own motion to dismiss;

(D) Actions by pro se litigants, except where the court also finds that the pro se party acted unreasonably in bringing, or refusing to voluntarily withdraw, the dismissed claim;

(E) Any claim which is a good faith, non-frivolous claim filed for the express purpose of extending, modifying, or reversing existing precedent, law or regulation, or for the express purpose of establishing the meaning, lawfulness or constitutionality of a law, regulation or United States or Tennessee constitutional right where the meaning, lawfulness or constitutionality is a matter of first impression that has not been established by precedent in a published opinion by the

Tennessee supreme court, court of appeals, court of criminal appeals, a United States district court in Tennessee, or by the United States supreme court. This subdivision (c)(5)(E) shall not apply unless at the time the successful motion to dismiss was filed the party that made the dismissed claim had specially pleaded in its latest complaint, counter-complaint or cross-complaint that the dismissed claim was made for one (1) of the express purposes listed above and cited the contrary precedent or interpretation the party seeks to distinguish or overcome, or whether the issue to be decided is a matter of first impression as described in this subdivision (c)(5)(E); or

(F) Any claim for which relief could be granted under a law, a court precedent published by a court described in subdivision (c)(5)(E), or a regulation, that was in effect and applicable to the claim at the time the motion to dismiss was filed; where that law, precedent or regulation was cited in the pleading in which the dismissed claim was made or in the response to the motion to dismiss; and where the motion to dismiss the claim was granted due to the subsequent repeal, amendment, overruling or distinguishing of that law, regulation or published court precedent.

(6) This section shall not be construed to limit the ability of any court to dismiss a claim or assess costs against a party whose claim has been dismissed, where permitted or required by other law, court rule or at common law.

Credits

1917 Pub.Acts, c. 107, § 1; 2012 Pub.Acts, c. 1046, § 1, eff. July 1, 2012.

Formerly Shannon's Code, § 4962a1; 1932 Code, § 9116; § 20-1621.

Notes of Decisions (39)

T. C. A. § 20-12-119, TN ST § 20-12-119

Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through June 30, 2021, as well as the following chapters that include amended or adopted content effective July 1, 2021: Public chapters 36, 60, 65, 70, 86, 87, 91, 93, 97, 100, 104, 107, 108, 115, 125, 132, 134, 138, 139, 143, 144, 147, 150, 152, 155, 162, 163, 164, 166, 168, 169, 176, 180, 181, 182, 183, 184, 188, 189, 205, 206, 207, 210, 213, 214, 215, 216, 218, 220, 221, 223, 225, 227, 228, 235, 236, 240, 245, 246, 248, 252, 259, 260, 265, 266, 270, 272, 275, 277, 278, 280, 284, 291, 292, 293, 294, 295, 298, 299, 300, 303, 304, 307, 310, 311, 319, 322, 328, 334, 335, 341, 344, 345, and 566. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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