STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

March 31, 2014

Opinion No. 14-40

Written Stipulations Concerning Depositions

QUESTIONS

1. Is the deposition stipulation provided for in Tenn. R. Civ. P. 29 and referred to in Tenn. Code Ann. § 24-9-136 limited to discovery procedures such as notice, time extensions, place, and manner?

2. May the disqualification provisions of Tenn. Code Ann. § 24-9-136(a)(3), (5) be waived by stipulation, including but not limited to the disqualification for an employee of one of the parties or of an attorney for one of the parties or someone with a financial interest in the action or its outcome?

OPINIONS

1. No. The deposition stipulation is not limited to notice, time extensions, place, and manner. Under Tenn. R. Civ. P. 29, the parties may stipulate that depositions be taken before *any person*, at any time or place, upon any notice, and in any manner.

2. Yes. The disqualification provisions of Tenn. Code Ann. § 24-9-136(a)(3), (5) may be waived by stipulation, including the disqualification for an employee of one of the parties or of an attorney for one of the parties or someone with a financial interest in the action or its outcome.

ANALYSIS

Tenn. Code Ann. § 24-9-136 prohibits the taking of a deposition before persons with certain conflicts of interest unless the parties have entered into "a stipulation otherwise pursuant to Rule 29 of the Tennessee Rules of Civil Procedure." Tenn. R. Civ. P. 29 provides as follows:

> Unless the court specifically orders otherwise, the parties may by written stipulation signed by all parties or counsel (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner, and when so taken may be used like

> other depositions, and (2) modify the procedures provided by these rules for other methods of discovery.

In construing statutes, legislative intent is determined from the plain and ordinary meaning of the language used unless the language is ambiguous. *Freeman v. Marco Transp. Co.*, 27 S.W.3d 909, 911 (Tenn. 2000). Although the rules of civil procedure are not statutes, the same rules of statutory construction apply in the interpretation of rules. *Thomas v. Oldfield*, 279 S.W.3d 259, 261 (Tenn. 2009). In construing rules, the goal is to ascertain and give effect to the Supreme Court's intent in adopting the rules. *See State v. Mallard,* 40 S.W.3d 473, 480-81 (Tenn. 2001) ("[T]he [Tennessee] Supreme Court has the inherent power to promulgate rules governing the practice and procedure of the courts of this state.").

1. The deposition stipulation provided for by Tenn. R. Civ. P. 29 is not limited to procedures such as notice, time extensions, place, and manner. The rule clearly provides that the parties may, by written stipulation, allow depositions to be taken before "any person." Indeed, it is precisely because Rule 29 authorizes the parties to stipulate that a deposition be taken before *any person* that it can operate as an exception to the disqualification provisions in Tenn. Code Ann. § 24-9-136.

The Advisory Commission Comment to Rule 29, which is a comment to the 1993 amendment to the rule, does not pertain to depositions. The 1992 version of Rule 29 required that stipulations extending the time for responses to discovery be made only with the court's approval. *See* Tenn. R. Civ. P. 29 (1992). As the Advisory Commission Comment states, the 1993 amendment eliminated this prohibition.[1]

2. Among those disqualified from taking depositions are an employee of one of the parties or of an attorney for one of the parties and someone with a financial interest in the action or its outcome. Tenn. Code Ann. § 24-9-136(a)(3), (5). But the statutory language "[u]nless all of the parties have entered into a written stipulation otherwise pursuant to Rule 29" appears at the very beginning of § 24-9-136(a), and it allows for no exception or limit to its application. It thus must be construed to apply to all subdivisions of § 24-9-136(a), including subdivisions (a)(3) and (a)(5). The statutory disqualifications under Tenn. Code Ann. § 24-9-136(a)(3), (5) may therefore be waived by stipulation pursuant to Tenn. R. Civ. P. 29.

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[1] "The amendment eliminates the prohibition on stipulated time extensions absent court approval for interrogatory answers, production of documents and things, and responses to requests for admission. The court can 'specifically order otherwise.'" Tenn. R. Civ. P. 29, Advisory Commission Comment (1993).

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