

**JUDGE PHILIP SMITH**  
**4th Circuit Court**  
**Room 607**

**I. BRIEF BIOGRAPHY**

Judge Philip E. Smith graduated from the University of Tennessee College of Law in May of 1988. In October of 1988, Judge Smith went to work for the Office of the District Attorney General for the Twentieth Judicial District working in the Child Support Enforcement Division. In September 1990, Judge Smith joined the Norman Law Offices and remained there until March of 2001. In March 2001, Judge Smith, along with Phillip Robinson and Teresa Webb Oglesby began their own law practice.

Judge Smith's practice consisted of mainly family law matters, including divorce, child support matters, custody and visitation matters, antenuptial agreements, post-nuptial agreements, grandparent visitation cases and domestic mediation.

In 2008, Judge Smith was inducted as a "Fellow" in the American Academy of Matrimonial Lawyers. The American Academy of Matrimonial Lawyers is an organization made up of the finest divorce lawyers in the United States. In 2007 and 2008, Judge Smith was listed in "Best Lawyers in America" in the Family Law category. In 2008, "Mid-South Super Lawyers" listed Judge Smith, along with 24 other lawyers from the Mid-South (Arkansas, Mississippi and Tennessee) as a "Super Lawyer" in the Family Law category.

In January 2009, Judge Smith became board certified as a Family Law Trial Advocate by the National Board of Trial Advocacy.

On March 18, 2009, Judge Smith was appointed as Judge of the Fourth Circuit Court of Davidson County, Tennessee, to succeed Judge Muriel Robinson. In August of 2010, Judge Smith was elected by popular vote to serve the balance of Judge Robinson's term.

**II. PRELIMINARY GENERAL MATTERS**

**A. Court schedule**

The Court's normal weekly schedule consists of the following:

Monday

Order of Protection Docket.....9:30 a.m.

Child Support Services Docket.....1:30 p.m.

Tuesday

1st Tuesday of the month: Uncontested adoptions with contested divorce docket immediately following.....9:00 a.m.

Regular Tuesday docket: Uncontested docket including divorces awarded on default judgment with contested docket immediately following.....9:00 a.m.

Wednesday

Uncontested docket including divorces awarded on default judgment with contested docket immediately following.....9:00 a.m.

Thursday

Show Cause docket.....9:00 a.m.

Friday

Fourth Circuit holds a motion docket every other Friday beginning with the first Friday of the month. The motion docket schedule is posted on the Circuit Court Clerk's website.....9:00 a.m.

#### **B. Correspondence with the Court**

Judge Smith prefers that all matters be communicated to the Court in pleadings, notices, memoranda, or in open Court.

All requests for continuances which are opposed for matters on any docket, other than the contested docket, shall be made by written correspondence to the Court's Docket Clerk. The correspondence shall contain the basis for the request for continuance and set forth all communication with opposing counsel regarding the request for continuance. If the matter in question was set by agreement, the matter will be continued only for good cause. If the matter requested was set by the Court without input from counsel for the parties or if the matter was set unilaterally by counsel opposing the continuance, the Court will be inclined to liberally grant the continuance.

#### **C. Telephone Conference with Court**

Due to the volume of cases assigned to Fourth Circuit, the Court is prevented from conducting telephone conferences regarding pending litigation. However, the Court will attempt to accommodate counsel regarding discovery disputes that arise during discovery depositions.

The Court reserves the right to conduct telephone conferences, *sua sponte*, when necessary in the furtherance of justice.

#### **D. Telephone Conference with the staff**

Telephone conference with the Fourth Circuit staff is encouraged as it relates to administration and procedure. However, discussion of the merits of any pending litigation is strictly prohibited.

### **III. PRETRIAL MATTERS**

#### **A. Scheduling Orders**

Judge Smith does not generally require scheduling orders. Judge Smith expects attorneys to prepare lawsuits and bring them to conclusion in a timely, efficient and financially reasonable manner. To further this goal, Judge Smith encourages the parties to enter into scheduling orders early in the pendency of the case. Judge Smith will grant reasonable requests for scheduling orders. The party requesting the scheduling order shall attach to the motion a proposed scheduling order.

#### **B. Continuances and Extensions**

Extensions of scheduling order deadlines will be granted only upon good cause if requested before the deadline has passed and there is no unfair prejudice to the opposing party. Deadline extensions by agreed order will only be approved by the court after a motion, accompanied by affidavit setting forth good cause, has been heard by the court.

Extension of scheduling order deadlines will generally not be granted after the deadline has passed. Parties may not agree to extend deadlines without court permission.

Contested cases and judicial settlement conferences will only be continued upon a showing of good cause accompanied by motion and affidavit. Parties may not agree to continue without court permission.

### C. Pretrial Motions

Motions in Limine

All motions in limine will be heard in strict accordance with Rule 30 of the Local Rules of Practice for Davidson County, Tennessee. Failure to comply with the rule may result in waiver of the relief requested.

### D. Pretrial Briefs

All pretrial briefs shall be filed with the Circuit Court Clerk at least 72 hours (excluding weekends and holidays) prior to the scheduled hearing. Pretrial briefs are not required, but encouraged. The Court also requests that once the brief is filed in the clerk's office a chamber copy be delivered to the Fourth Circuit staff.

### E. Other Pretrial Filings

Judge Smith requires the following documents to be filed 72 hours (excluding weekends and holidays) prior to the scheduled contested divorce hearing:

- (1) Statement of contested issues;
- (2) Asset and liability statement;
- (3) Proposed division of assets and liabilities;
- (4) Other proposed relief (if applicable);
- (5) Income and expense statement (if applicable);
- (6) Proposed permanent parenting plan (if applicable).

Judge Smith requires strict compliance with Rule 29 of the Local Rules of Practice for Davidson County, Tennessee.

### F. Setting of Cases

Uncontested Divorces - An order to set must be filed at least seven days (excluding weekends or holidays) prior to the hearing date. Hearing dates can be obtained from the Fourth Circuit staff.

Contested Divorces and Contested Custody Matters - Before a matter may be set for final hearing, mediation must be completed and, in appropriate cases, the parties must have attended the required parenting seminars. Waiver of these requirements will only be granted upon good cause after a motion hearing. The parties cannot agree to waive this requirement.

Upon satisfying the requirements above and upon the approval of a Certificate of Readiness, a party may request a final hearing date by motion. Upon the granting of the motion to set, a request for final hearing date shall be made to Brenda Womack. When obtaining a date to set, a date for judicial settlement conference will also be provided. A judicial settlement conference date must be set at the same time as the final hearing date. **Setting a date for judicial settlement conference is required before the matter is set for final hearing.**

All judicial settlement conferences shall be conducted by a Special Master.

Default Cases - Matters that are being conducted based on default judgment shall be set by an order filed no later than fourteen (14) days (excluding weekends and holidays) prior to the hearing date. Default cases may be set on days the Court hears uncontested divorces. Hearing dates can be obtained from Fourth Circuit staff.

Adoptions - Uncontested adoptions may be set on the designated monthly adoption day. Hearing dates can be obtained by contacting Brenda Parks.

All other contested matters shall be set by motion requesting a final hearing date.

#### **IV. DISCOVERY**

All discovery (written or otherwise) in civil matters shall be conducted in accordance with the Tennessee Rules of Civil Procedure and the Local Rules of Practice for Davidson County, Tennessee.

1. Rule 22 of the Local Rules of Practice for Davidson County, Tennessee shall be strictly adhered to by parties.

2. Judge Smith considers a discovery request for financial information going back more than twenty-four (24) months prior to the filing of a complaint for divorce to be "excessive." If a limitation on the discovery period for financial information in a divorce case is filed, the party requesting a longer period will have the burden of persuading the court that the longer period is not "excessive." The Court will balance all competing interests of the parties, including the relevant cost and financial means of each party in rendering its decision. Judge Smith encourages parties to conduct necessary discovery by informal and less costly means such as jointly sworn asset and liability statements and jointly sworn income statements. Informal discovery will save the parties significant cost in attorney fees and may result in less adversarial attitudes towards one another rendering settlement more achievable.

#### **V. MOTIONS**

##### A. Filing deadline for motions

January 1, 2011, Judge Smith and Judge Soloman, by joint order modified the filing date for domestic motions to require that all motions filed in Fourth and Eighth Circuit Courts be filed no later than the close of business on the Friday nine (9) business days before the day of the motion hearing. Responses to motions are encouraged, but not required. **No motion shall contain language requiring a response.**

B. Judge Smith generally reviews all motions filed before the motion docket. Judge Smith requires adequate information for the basis of the motion, why the movant is entitled to relief and the specific relief requested. If the issue raised by the motion raises a question of law, Judge Smith requests that any authority relied upon be attached to the motion or memoranda supporting the motion. Judge Smith also requests that any contrary authority be pointed out in the motion or memoranda and attached thereto.

C. Due to the heavy volume of motions on each motion docket, Fourth Circuit staff requests that you know the number that your motion is on the docket when phoning in announcements.

##### D. Testimony during motion hearings

Testimony during motion hearings will be limited. Parties that feel testimony is necessary should set forth the testimony by affidavit when feasible. Sworn income and expense statements are required for motions requesting support and will generally serve as testimony as to need and ability to pay.

E. Motion hearings that are anticipated to take more than twenty (20) minutes will be passed to the end of the docket. Those motions will be heard at the conclusion of third call. Judge Smith requests if a party knows in advance a motion hearing will last more than twenty (20) minutes that notification be given during first call.

F. Due to the regular heavy volume of motions on the motion docket, Judge Smith requests that counsel not approach the docket clerk until the conclusion of first call.

G. Motions for default judgment do not require an appearance by counsel for the moving party.

#### **VI. MISCELLANEOUS MATTERS**

##### A. Temporary Restraining Orders

Temporary restraining orders in divorce cases will be denied if the subject matter of the requested restraining order is covered by the statutory injunctions.

The Court in its discretion, may set a temporary restraining order for hearing *sua sponte*. The Court, in reliance on Rule 65.07 of the Tennessee Rules of Civil Procedure, may leave the temporary restraining order in effect indefinitely or until final hearing.

No temporary restraining order resulting in an ex parte change in the primary residential status or custody of minor child will be granted unless the requirements of Tennessee Code Annotated § 36-6-405(b) are met.

#### B. Orders

Generally, Judge Smith requires attorneys to submit orders setting forth his ruling. **Orders shall contain all findings of fact and conclusions of law made by Judge Smith.** Orders are to be filed with the Circuit Court Clerk within forty-eight (48) hours.

#### C. Courtroom Decorum

Judge Smith expects attorneys to be appropriately attired and to conduct themselves with proper respect. It is inappropriate to interrupt opposing counsel while he or she is addressing the Court, unless the purpose is to interpose a good-faith objection. It is also inappropriate to make personal or derogatory comments about opposing counsel either to the Court or to opposing counsel. PERSONAL ATTACKS ON OPPOSING COUNSEL ARE NOT APPROPRIATE.

Judge Smith does not allow litigants to wear shorts, tank tops, cut up shirts or sunglasses. Chewing gum, food, and drinks are not allowed in the courtroom. Attorneys are responsible for making their clients aware of these rules.

#### D. Previous Chamber Rules

All previous chamber rules of the Fourth Circuit Court are hereby set aside and are of no force or effect.

#### E. Suspension of Chamber Rules

These chamber rules or any part thereof are subject to suspension by Judge Smith when, in his discretion, justice requires.