

JUDGE RANDY KENNEDY
7th Circuit Court
Room 608

I. Brief Biography

Randy Kennedy is Judge of Division VII of the Circuit Court for Davidson County. He was first selected for office in November 2003, and was appointed by Governor Phil Bredesen. In 2004 he was elected by the citizens of Nashville and re-elected in 2006. Though he is frequently identified as the probate judge (for he is the only judge who hears probate matters in Davidson County), he also has Circuit Court and Chancery Court jurisdiction. Judge Kennedy presides over conservatorships and the administration of decedents estates and, by agreement with other trial judges, he also hears various other civil cases which include general sessions appeals, workers compensation and other non-jury matters as well as some civil jury trials. Judge Kennedy served as Presiding Judge of the Trial Courts of the 20th Judicial District from 2005-2007.

Following graduation from law school in 1977, he entered the private practice of law. After working for a small suburban trial firm for six years, he formed an association of attorneys in 1983, where he remained until taking office in 2003. Judge Kennedy practiced law in Nashville for 26 years prior to taking the bench.

His civic and professional activities have included service as a Metro Council member for two terms (1989-1995), member of the Metro Charter Revision Commission (1995-2007), President of the Donelson-Hermitage Chamber of Commerce (1980), President's Advisory Council for Middle Tennessee State University (1998-2003), and past Board member of Senior Citizen's, Inc., Middle Tennessee Council Boy Scouts of America, Donelson-Hermitage Exchange Club, and Nashville Area Chamber of Commerce. Judge Kennedy is an instructor on the faculty of the Nashville School of Law having taught the class on Wills from 2005-present.

Judge Kennedy is a member of the Nashville Bar Association, Tennessee Association for Justice, the Tennessee Bar Association, the Tennessee Trial Judges Association, the National College of Probate Judges, and is a fellow of the Nashville Bar Foundation.

II. Preliminary General Matters

A. Scheduling

Scheduling of matters that will require less than a 20 minute hearing are scheduled with the Probate Clerk's Office (862-5980) for Probate matters. Matters requiring more than a 20-minute hearing are scheduled through Judge Kennedy's Judicial Assistant, Kitty Lammers (862-5990).

B. Correspondence with Court

Judge Kennedy does not consider ex parte communications. Letters addressed to the Court will be file stamped and placed in the case file. Issues requiring the Court's intervention or assistance should be brought to the attention of the Court by the appropriate motion or petition with notice/summons to the Interested Parties as are appropriate.

C. Telephone Conferences with the Court

Judge Kennedy will entertain telephone conferences when out of town counsel or parties are involved, or when necessary because of the facts of the case. Ex parte conferences of any kind will not be entertained.

D. Telephone Conference with Law Clerk

Telephone conference with the law clerk regarding routine matters is permitted. Law clerks are not permitted to give advice regarding strategy or an opinion of how the Judge will rule on a particular matter.

E. Pro Hac Vice Admission

Judge Kennedy follows the requirements of the Tennessee Rules of Civil Procedure and the Local Rules of Practice for Trial Courts in Davidson County, Tennessee.

F. Motion to Ascertain Status

Inquiry regarding the status of an order or matter taken under advisement may be made by motion, but inquiry may be made simply by calling the Probate Court Clerk's Office. If status of the matter cannot be ascertained in this way, the inquiry may be made through the Judge's law clerk. On matters where a quick response from the Court is requested, be prepared to inform the law clerk of why the matter is urgent. If some time has passed since an order was submitted, inquiry is welcomed particularly to ascertain that the order has not been misfiled or lost. Judge Kennedy follows Local Rules of Court for Davidson County 33.02 that requires a three-day waiting period on orders bearing only the signature of the attorney who prepared the order.

III. Pretrial Matters - Civil Cases

A. Scheduling Orders

See "Scheduling Letter" ([Appendix III](#)).

B. Continuances and Extensions

1. General Policy

The Court looks favorably upon continuances by agreement unless exigencies of the case require prompt resolution of the matter.

2. Requests

If the parties cannot agree to continue a matter, the request for a continuance must be made by motion. The Court must approve continuances related to show cause hearings or accounting reviews in Probate matters.

C. Pretrial Motions

1. Motions for Summary Judgment

In accordance with Tenn. R. Civ. P. 56.03, Judge Kennedy requires that each side provide a statement of disputed and undisputed facts.

2. Motions, Responses, Replies and Briefs

Judge Kennedy follows the Local Rules of Court for Davidson County with respect to time frames and filing deadlines, but allows some flexibility in Conservatorships/Guardianships because a Probate Court must protect the best interest of its wards irrespective of filing deadlines.

Also see "Scheduling Letter."

3. Chamber Copies of Filings

Chamber or courtesy copies are not required. If submitted, such copies must be filed with the Clerk first before being delivered to the Judge's office.

4. Proposed Orders

Proposed orders are welcomed and are not considered presumptuous.

5. Orders

Orders should state the date on which the matter was heard. Orders that have no date or "blanks" for the Court to "fill in" the date increase the Court's workload and delay processing of the order. This is because the Judge's law clerk reviews each order and verifies it against her notes. When there is no date, the clerk must determine the date before the order can be verified. A certificate of service should be attached to every order.

Orders should be written so as to be self-explanatory. For example, instead of saying "Bond is waived" a more specific statement is preferred such as, "Bond is waived in accordance with Section IV of the will."

6. Automatic Granting of Motions When No Response Filed

Local Rule of Court, Davidson County 26.04 (f) which provides that motions which are not responded to are automatically granted is seldom followed in Conservator/Guardian proceedings because of a Probate Court's duty to protect its wards. Ultimately, the Court is the adversary even if a motion in one of these cases is unopposed.

7. Expedited Orders

An attorney or party requesting that an order be signed immediately should be prepared to inform the Judge's law clerk of 1) the urgency and 2) whether there is any opposition to the order.

8. Emergency Petitions

The petition should indicate plainly that it is a request for emergency relief such as "PETITION FOR APPOINTMENT OF AN EMERGENCY TEMPORARY CONSERVATOR." The petition should be filed first with the Probate Clerk. Next, counsel should inform the clerk that it is an emergency and ask the clerk to walk it up to the Judge's office for processing.

D. Discovery

1. Discovery Period and Extensions

The parties may extend discovery deadlines by agreement.

2. Discovery Responses

Judge Kennedy holds litigants at trial to the responses made in discovery.

3. Resolution of Discovery Disputes

Judge Kennedy believes in compliance with the letter and spirit of the Tennessee Rules of Civil Procedure. If the attorneys cannot resolve a discovery dispute, Judge Kennedy will resolve the dispute by hearing upon an appropriate motion. Also see "Scheduling Letter."

4. Exhibits, Witnesses and Subpoenas

See "Scheduling Letter."

E. Pretrial Briefs

F. Settlement Conferences

Judge Kennedy presides over settlement conferences assigned to his court. If the case does not settle, he will not hear the trial in the matter unless all parties agree.

Judge Kennedy requires that the parties or their representatives with full settlement authority attend the conference. He also requires a settlement statement to be filed with this office and not filed with the clerk. The statement shall include a summary of the viable theories of liabilities or defenses, status of settlement negotiations, strengths and weaknesses of plaintiff's position and strengths and weaknesses of defendant's position. He begins the conference in his courtroom meeting with all parties. He then meets with each side separately, shuffling back and forth. He conducts his settlement conferences in an informal setting.

G. Mediation

Judge Kennedy is a strong advocate of voluntary mediation.

Any party may also file a motion to require mandatory mediation. The parties may agree to Court annexed mediation or non-Court annexed mediation.

A book of certified mediators is available in the Seventh Circuit Court. If the parties can't agree on a mediator, file a motion with the Court.

H. Temporary Restraining Orders

1. Filing

Temporary restraining orders should be filed with the Probate Clerk. The attorney or party should then advise the clerk to take them to the Judge's office for it to be acted upon immediately. The temporary restraining order should be identified clearly as such.

2. Requirements

Judge Kennedy follows Tenn. R. Civ. P. 65 and Rule 19.02 of the Local Rules of Court strictly. It is essential that there be compliance with subsection (a) of 19.02 providing for notice to the opposing party or that an affidavit be filed indicating why notice could not be given.

IV. Trial Procedure

A. Scheduling

See "Scheduling Letter" ([Appendix III](#)).

B. Courtroom Decorum

Attorneys are allowed to move about the Courtroom freely during the course of the trial. Judge Kennedy is presently formulating a specific dress code. Until such time as the dress code is published, all litigants, witnesses, and other adults who attend courtroom proceedings should be dressed in a respectful manner and should not appear in shorts, tank tops, cut-off pants, flip-flops, tee shirts or in other inappropriate attire. Attorneys and court reporters should be dressed professionally; however, the Judge will allow exceptions when necessary. Judge Kennedy will take whatever steps are necessary to insure that attorneys and litigants act with civility during hearings.

All cellular phones, beepers and similar devices should be turned off or switched to an inaudible tone during Court proceedings. After a matter has been heard or the parties need to discuss a matter, they are requested to do so outside the courtroom so as not to interfere with other hearings. Judge Kennedy will usually allow parties to use the jury room for such discussion if it is available.

C. Voir Dire

Usually 35 prospective jurors are selected from the jury pool. Judge Kennedy fills the jury box with 12 jurors plus 6 chairs in front of the jury box. Judge Kennedy will initially conduct his own voir dire of a general nature. When Judge Kennedy is finished, the attorneys may begin voir dire. As jurors are excused, the box is filled from the six chairs in the front row. Usually one alternate is chosen from the chairs in front of the box and the attorneys may vote on the alternate.

D. Note Taking By Jurors

Jurors are allowed to take notes during the course of the trial and are allowed to take the notes to the jury room when they retire.

E. Opening Statements

1. Length

Judge Kennedy expects opening statements to be relatively brief.

F. Side Bar Conferences

Side bar conferences are allowed.

G. Deposition Reading

Deposition reading is allowed; two readers are encouraged.

H. Exhibits

The Judge or the Clerk will mark exhibits. In cases involving documents or the like, it is extremely helpful for the judge and opposing counsel to have a copy of the documents so they can follow along with the witness.

I. Motions for Judgment as a Matter of Law

These are heard on Friday morning Motion Docket.

J. Proposed Jury Instructions and Verdict Forms

In cases involving numerous issues, Judge Kennedy often submits a proposed charge on the issues that he is aware of before the trial begins to both counsel. Counsel are encouraged to reach a consensus on as many issues in the Jury Instructions as possible so that the charge can be prepared in large part before the trial begins.

The jury charge and verdict form is modified during the trial if and when necessary. Counsel is given an opportunity to comment.

K. Proposed Findings of Fact and Conclusions of Law

They are provided when requested.

L. Offers of Proof

They are permitted when requested.

M. Jury Deliberation

1. Copy of Instructions

Each juror is given a copy of the instructions so they can read along while the charge is being read to the judge. The jurors are allowed to take their copy of the charge to the jury room and are allowed to take the charge home at the conclusion of the trial.

2. Access of Exhibits

All exhibits are provided to the jury during deliberation.

3. Access to Transcript of Testimony or Videotaped Testimony

Not available at this time.

4. Availability of Counsel

Counsel must remain in court unless granted leave to return to their office. In such event, counsel should leave their office phone number and cellular phone and pager numbers with the Judge's secretary so that they can be reached if the jury has a question or returns a verdict.

5. Taking the Verdict and Special Interrogatories

Special interrogatories are used when appropriate.

6. Polling the Jury

Judge Kennedy does not automatically poll the jury. He does ask counsel if they want the jury polled.

7. Interviewing the Jury

Judge Kennedy has no prohibition about interviewing jurors after the trial. He does make it clear to jurors that they are welcome to be interviewed by counsel after the trial but they are in no way obligated to do so.

V. Other Comments

A. General Flow of Cases

Mondays and Tuesdays are generally available for trials which are expected to take more than 20 minutes. It is also on these days that the Court tries non-probate civil actions, including General Sessions appeals. Because the Court also deliberates in jury trials (both probate and non probate), attorneys and pro se litigants wishing to set a case for final hearing should set all non-jury cases on those weeks which are reserved for non-jury trials.

Wednesdays and Thursdays are reserved for Probate matters. The docket is called first for announcements. Counsel whose announcement requires more than one minute should estimate the length of the hearing and matters are usually handled shortest first, longest last. When a jury trial has not finished, Judge Kennedy will often hold an expedited Probate docket before reconvening the jury trial.

Friday mornings are reserved for motions in Probate matters. Status conferences and pretrial conferences are held on Friday afternoons. While fee motions do appear on the Friday docket they are usually not called unless there is opposition or counsel appears to explain a fee. Fee motions are typically taken under advisement.

B. Status Conferences

Judge Kennedy will set status conferences sua sponte or upon request of the parties.

C. Office Decorum

Because of the limited space, Judge Kennedy asks that "visiting" not take place in the Court's offices. He simply asks that counsel realize that when he is not on the bench he and his staff still have work to do in their office.

D. Local Rules of Court, Davidson County Rule 39 et seq

Counsel should consult Rule 39 et seq before appearing in Court on a probate matter. These rules, which are a result of the prior efforts of the Probate Court Committee of the Nashville Bar Association and Judge Kennedy's predecessor, Judge Frank Clement, are very detailed and are of critical importance. These rules fill in important gaps in the statutes and in some instances impose more stringent requirements than the statutes, particularly in areas involving notice and due process. An amendment to Rule 39.03 can be found at [\(Appendix V\)](#).

E. Show Cause Hearings and Accounting Reviews

The Court will order fiduciaries to show cause or set an accounting review on the docket when fiduciaries have failed to provide accounting, provided an irregular accounting, or for other acts of misconduct. It is critical that the fiduciary appear at the show cause hearing or review because the Court will take immediate action to resolve the matter when no one shows up. This action may consist of "Retiring" the case which results in an order that puts the case on retired status but holds the fiduciary personally liable for their improper administration of the case, or removing the fiduciary, or submitting the matter to the District Attorney's Office for investigation.

F. Bond

Bond is required of every fiduciary regardless of professional or social standing with three exceptions: 1) fiduciary may eliminate the need for bond or reduce the bond needed by freezing all or a portion of the funds through a "freeze agreement" with a financial institution that provides that the frozen funds will not be disbursed without Court approval; 2) the funds may be paid into the Probate Clerk's office; 3) the fiduciary is covered under a blanket bond for cases on which they are appointed by the Court. Instructions for executing a restricted account "freeze" agreement, and an acceptable form of freeze agreement is attached as [\(Appendix IV\)](#).

G. Name Changes

Judge Kennedy is very reluctant to change minor's names and will not do so when the name change appears to be used to effect an adoption. Names of foreign citizens are not changed unless they are a bonafide resident of Davidson County, Tennessee. Judge Kennedy discourages changing birth certificates.

H. Sample Probate Petition

Please find a sample probate petition at [\(Appendix VI\)](#).