# Litigation Law Section Newsletter
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**Time Out "Pitfalls for the Unwary"**
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You have filed your complaint in state court within the statue of limitations period and turned the papers over to your process server for service. The process server even reports to you that the defendant has been served. While there are plenty of other hoops that remain for you to jump through, meeting the statute of limitations is not one of them. Right?
Wrong.

Like a child afraid of the dark, most of us have a vague sense that there are obscure nuances in the tall grass of procedural law into which we may be swallowed up. On the theory that it is better to be forewarned than surprised, observe the precautionary example of First Tennessee Bank, N.A. v. Dougherty, (Tenn. App. C.A. NO. 03A01-9704-CH-00118, July 25,
1997) (McMurray, J.).

While its counterpart in the Federal Rules is elegant for its simplicity: "A civil action is commenced by filing a complaint with the court," Dougherty illustrates the complexities of Rule 3 of the Tennessee Rules of Civil Procedure. In Dougherty, the plaintiff obtained a judgment against the defendant some years previously. Close to the ten year anniversary of the judgment, the plaintiff initiated an action to renew the judgment and prevent the 10 year statute of limitations applicable to judgments (Tenn. Code Ann. § 28-3-110) from extinguishing the judgment.

Summonses were timely issued on six occasions. The first five did not result in proper service. According to the concurring opinion, Mr. Dougherty had ostensibly evaded service of process on numerous occasions. The sixth summons was issued on November 15, and served Mr. Dougherty, along with a copy of the complaint on November 30. The process server did not make a return to the court until more than thirty days after the issuance of the sixth summons.

Mr. Dougherty moved to dismiss, asserting that this service of process was not sufficient to toll the statute of limitations. In making this assertion, he relied upon Tenn. R. Civ. P., Rule 3, "Commencement of Action." The trial court found the motion to be well-taken, dismissing the lawsuit. The Court of Appeals affirmed.

Dougherty demonstrates that under Rule 3 of the Tennessee Rules, an action filed within the statute of limitations period may yet be dismissed as untimely, even if a summons is issued and process is served. The Court observed that: "if process is not returned within 30 days from issuance, regardless of the reason the plaintiff cannot

rely upon the original commencement to toll the running of the statute of limitations."

There are at present only two exceptions to this rule: (1) if new process is obtained within one year from issuance of the previous process; or (2) if no process is issued, within one year of the filing of the complaint. As stated by the Tennessee Supreme Court in Adams v. Carter County Mem. Hosp., 548 S.W.2d 307, 309, (Tenn.1977): "The Rules plainly contemplate that a summons will be either served within thirty days after its issuance or returned unserved promptly at the end of that period of time." Otherwise, a plaintiff may run the risk that the original commencement date of the action may be lost as a bar to the running of a statute of limitations.
The concurring opinion, by Judge Franks, did not take issue with the Court's application of the procedural rules to this case. He criticized Tenn. R. Civ. P., Rule 3, which unlike its counterpart in the Federal Rules, "remains complex and contains pitfalls for the unwary," retaining some of the complexities of the old common law pleadings, which the Rules were designed to avoid.

Most practitioners probably agree with Judge Franks' judgment that "[t]he problems this provision creates far outweigh any benefit it may have." However, until (or unless) Tenn. R. Civ. P. Rule 3 is amended to conform with its Federal counterpart, the practicing Tennessee attorney must remain wary of this "pitfall for the unwary."