GENERAL MANUAL
FOR
CLERKS OF COURTS

Prepared by
TENNESSEE CLERKS OF COURT
in coordination with
THE UNIVERSITY OF TENNESSEE-S
COUNTY TECHNICAL ASSISTANCE SERVICE
and
CENTER FOR GOVERNMENT TRAINING
and
THE TENNESSEE SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS

Revised May 2001

PREFACE

This manual has been published to assist all Court Clerks in the service to the citizens of Tennessee. The manual is designed to provide a broad based review of the operation of a state Court Clerk's Office. While the manual is a comprehensive publication, Clerks are urged to use alternative resources to supplement the data in the manual.

This is the third update of the manual. The first publication was in 1996 and again in 1998. Many of the changes reflect legislative action amending the Tennessee Code Annotated. The changes in this version are minor in nature but are important. It is the goal of the Committee to keep the manual current.

The manual will be updated every time a change is needed. The change will be posted on the AOC Website. The address is **www.tsc.state.tn.us.** The complete manual will be online at this site.

At the Clerks' Fall conferences, an update supplement will be available. Clerks will only have to change the pages in the manual that need replacing. This will insure that the manual is updated every year.

We welcome your suggestions and comments for the improvement of this publication in the future.

As Chairman of the Committee, I extend my thanks to all Committee members as listed in the following pages. Special thanks to Rebecca Montgomery, Senior Staff Attorney for the AOC and to the AOC Staff for all their hard work.

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DEDICATION

This manual is dedicated to the memory of Amy Hull Ransdell, 1963-1994, as set forth in the following memorial prepared by her colleagues from the County Technical Assistance Service Institute for Public Service from the University of Tennessee.

MEMORIAL TO
AMY HULL RANSDELL
1963 - 1994

Amy Hull Ransdell was born in Greeneville, Tennessee, to U.S. District Judge Thomas and the late Joan Hull on June 21, 1963. She graduated from high school in Greeneville, Tennessee, and attended the University of Tennessee, graduating with a B.S. in communications in June of 1985.

In the fall of 1988, after having spent three years as a congressional aid in Washington, Amy entered the Cecil C. Humphreys Law School of Memphis State University and graduated in May of 1991. Upon completion of law school, she moved to London, Kentucky, clerking for Judge Eugene Siler of the Sixth Circuit Court of Appeals. She was based in London but worked frequently in Cincinnati, Ohio, when the court was sitting there.

Prior to her marriage to Keith Ransdell on May 7, 1993, Amy joined the legal staff of the County Technical Assistance Service, an agency of the University of Tennessee. As a part of her position, Amy assisted county officials across the state, providing guidance in legal matters, with primary emphasis directed to State Court Clerks. She co-authored a number of manuals designed to assist these county officials with the operation of their offices. After her death, the County Officials Association of Tennessee honored Amy with the Outstanding Public Service Professional Award.

On December 9, 1994, Amy, who was five months pregnant with a little girl, Emma Katherine, was killed by a drunk driver who drove his pickup onto the sidewalk pinning Amy against a steel light pole.

The accident occurred around noon as Amy was standing on the sidewalk in front of Church Street Centre Mall in downtown Nashville during her lunch hour waiting to cross the street. Amy had been Christmas shopping for gifts for her family, typical for Amy, whose family meant so much to her.

Amy will be remembered by those who knew her as a sweet, considerate, and happy person who was so looking forward to being a mother and having a family of her own. In today's world where people seem to be becoming more cynical and less caring, Amy stood out as a rare individual who greeted everyone with a smile and had a gentle, caring, positive spirit. She looked for and saw the good in everyone around her.

A gentle light has gone out of this world, but her sweet spirit will never be forgotten; nor should we ever forget why she is gone and why Emma Katherine will never have the chance to experience life.

Amy's tragic death and that of her unborn child, Emma Katherine, at the hands of a drunk driver, has resulted in stiffer penalties and stronger enforcement of the DUI laws. If lives are saved as a result, then some good can come out of this meaningless tragedy. A college scholarship has been established in her memory, the Amy Hull Ransdell

Scholarship Fund in Greeneville, Tennessee.

Above all else, Amy was an exceptionally warm and loving person who cared deeply for her family and friends. She stayed in constant contact with the lives she touched. She never forgot a birthday or anniversary. During the last months of her life she wrote a poem on how precious her family was to her, and it was read as a part of Amy's funeral service.

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I. DESCRIPTION OF THE OFFICE

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I. DESCRIPTION OF THE OFFICE

Legal Qualifications of Clerks of Courts

The Tennessee Constitution establishes a judicial department of government for the State of Tennessee, stating that the "judicial power of the State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature" shall establish; it also grants the Legislature the power to establish jurisdiction of the inferior courts (TENN. CONST., art. VI, § 8). Article VI, Section 13 of the Tennessee Constitution provides for clerks to serve these courts:

> Chancellors shall appoint their clerks and masters, who shall hold their offices for six years. Clerks of the Inferior Courts holden in the respective Counties or districts, shall be elected by the qualified voters thereof for the term of four years. Any Clerk may be removed from office for malfeasance, incompetency or neglect of duty, in such manner as may be prescribed by law.

Although the Tennessee Constitution provides for the office of clerk, it does not define qualifications or duties for the office; this function is performed by the General Assembly (Legislature). Since court clerk is a constitutional office, the General Assembly may not abolish the office or totally change its character, but the legislature may specify duties and qualifications which are not inconsistent with the state or federal constitutions.[1]

Each court has a clerk, elected or appointed for a term of years, whose duty is to attend to the court and perform all clerical functions (T.C.A. §18-1-101). In most counties, criminal and civil jurisdiction are exercised by one court which is served by the circuit court clerk, who is also the general sessions court clerk in many counties (T.C.A. §16-15-301). The clerk and master serves as clerk for the chancery court as well as the probate court in many counties. A clerk of court acting in the discharge of official duties is not the agent of either party, but is the officer of the court and the legal custodian of court records. The clerk is a ministerial officer, although in certain instances a clerk's duties may be partly judicial.[2]

Residence. Each clerk must reside within the county where the court is held and must maintain an office at the county seat during the entire term (T.C.A. §18-1-102). Issues regarding residency frequently arise, not only in connection with clerks but also with other public officials. In response to these questions, the General Assembly passed the following guidelines to determine residence (T.C.A. § 2-2-122):

> * The residence is that place in which a person's habitation is fixed, and to which, whenever absent, that person has a definite intention to return.

* A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one residence.

* A person does not become a resident of a place solely by intending to make it that person's residence. There must be appropriate action consistent with the intention.

* A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state, or place within this state for temporary purposes, even if of years duration.

* The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides.

* A person may be a resident of a place regardless of the nature of the habitation, whether house or apartment, mobile home or public institution, owned or rented.

* A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation.

* No member of the armed forces of the United States, or the member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

The following factors, among other relevant factors, may be considered in the determination of where a person is a resident (T.C.A. § 2-2-122):

* Possession, acquisition or surrender of inhabitable property.

* Location of occupation.

* Place of licensing or registration of personal property.

* Place of payment of taxes which are governed by residence.

* Purpose of presence in a particular place.

* Place of licensing activities, such as driving.

General Qualifications. The General Assembly has not placed any special requirements on holding the office of clerk of court, and only the general qualifications to hold office apply: all persons over the age of eighteen years[3] who are citizens of the United States and Tennessee, and who reside within and are qualified voters of the county they represent,[4] are qualified to hold the office of clerk of court, except the following:

1. Those convicted of offering or giving a bribe, or larceny, or any other offense declared infamous by law, unless those persons have been restored to citizenship;

2. Those against whom there is an unpaid judgment for moneys received by them in an official capacity, due to the United States, Tennessee, or any county;

3. Those who are defaulters to the treasury at the time of election (such an election is void);

4. Soldiers, sailors, marines, and airmen in the regular United States Navy, Army, or Air Force; and

5. Members of Congress and persons holding any office of profit or trust under any foreign power, other state, or the United States. (T.C.A. § 8-18-101).

A crime declared infamous by law basically means a felony or a crime which is punishable by disenfranchisement (loss of the right to vote). Also, any person holding an office who commits certain offenses involving abuse of official power is to be removed and disqualified from holding that or another office for ten years from the date of conviction (T.C.A. § 39-16-401 *et seq.*). Any disqualified person who takes office is guilty of a Class C misdemeanor (T.C.A. § 8-18-102).

Method of Election or Appointment and Term of Office

Appointed Clerks. As the Tennessee Constitution provides (TENN. CONST., art. VI, § 13), the clerk and master is appointed for a term of six years by the chancellor of the county. The term of office of each clerk and master begins with the date of appointment and extends for six years thereafter, unless it is interrupted by death, removal, or resignation, in which case a new clerk and master is appointed for a term of six years beginning with the date of appointment (T.C.A. § 18-2-213). A clerk and master may resign prior to the expiration of the six year term, but may not be reappointed to a new six year term at the time of resignation unless some other person has been appointed clerk and master in the interim. In other words, the term of the clerk and master may not be manipulated by feigned resignation and simultaneous reappointment.[5] If no reappointment is made at the end of the term, the clerk and master holds over until the position is filled.[6]

Elected Clerks. Clerks of courts other than the appointed clerks and masters discussed above are elected by the county's qualified voters for a four year term beginning on September 1 of the year of election and continuing until a vacancy occurs or until a successor is elected and qualified (T.C.A §18-4-101). Clerks of specially created courts, such as juvenile courts, must be filled pursuant to an election and cannot be filled by appointment of the judge of the special court.[7]

Elections are held at the regular August election immediately preceding the beginning of a full term (T.C.A. § 2-3-202). There is no limitation on the number of terms any type of clerk may serve, whether an elected clerk of court or an appointed clerk and master. Tennessee case law has recognized that a clerk who has not fulfilled the requirements necessary to assume the office was nevertheless a de facto officer, and therefore official actions were held to be valid.[8]

Oath of Office

Clerks of courts must take this oath to support the Constitutions of Tennessee and the United States:

> I,_____, do solemnly swear that I will support the constitution of the United States and of this state. I will execute the duties of this office without prejudice, partiality, or favor, to the best of my skill and ability; that I have neither given nor will give to any person any gratuity, gift, fee or reward in consideration of my support for this office and I have neither sold nor offered to sell, nor will sell, my interest in this office. (T.C.A. §18-1-103).

This oath may be administered by any officer legally authorized to administer an oath, which generally includes notaries, judges and clerks. The oath must be written and subscribed to by the person taking it. A certificate must accompany the oath, executed by the officer before whom it was given, specifying the day and the year the oath was taken (T.C.A. § 8-18-107). The oath and the certificate must be filed with the county clerk (T.C.A. § 8-18-109). The county clerk must endorse the certificate with the day and year of filing and also sign the endorsement (T.C.A. § 8-18-110). Although a clerk may file an oath before the scheduled start of a term of office, the clerk may not take that office until the term officially begins (T.C.A. § 8-18-109).

Deputies of court clerks must take the following oath of office:

> I do solemnly swear that I will perform with fidelity the duties of the office to which I have been appointed and which I am about to assume, and that I will faithfully discharge the duties of this office to the best of my skill and ability. I do solemnly swear to support the Constitutions of the State of Tennessee and the United States. (T.C.A § 8-18-111; T.C.A. § 18-1-104).

Any clerk who fails to take and file the required oath is guilty of a Class C misdemeanor (T.C.A. § 8-18-113).

Bond Requirements

Amount of Official Bond. The minimum amount of the official bond executed by the clerk, including appointed clerks and masters, is $25,000 in counties with less than 15,000 in population and $50,000 in counties with a population of 15,000 or more. These amounts can be increased by the court (T.C.A. §18-2-201). The surety can be held liable for every wrongful act or failure of duty of the clerk in his or her official capacity, whether embraced in the condition of the bond or not, or becoming a right of action under law subsequent to the execution of the bond (T.C.A. § 18-2-206).

Form of Official Bond. An official bond is an instrument which requires the sureties to pay up to a specified amount of money if the clerk fails to perform certain acts or performs wrongful and injurious acts under the color of office. Bonds are to protect the state and county, not the clerk, and constitute a written promise made by the clerk to (1) perform all of the duties of the office; (2) to pay over to authorized persons all funds received in an official capacity; (3) to keep all records required by law; (4) to turn over to the successor all records, money and property of the office; and (5) to refrain from anything is illegal, improper, or harmful while acting in an official capacity. Any person who is injured by the failure of the clerk to keep this promise may collect from the clerk's sureties, who may then have a right to recover from the clerk the amount paid (T.C.A. § 8-19-111; § 8-19-301). This is known as subrogation. *County officials are prohibited from being sureties for other county officials* (T.C.A. § 8-19-108; T.C.A. § 8-19-109).

The form for official bonds is prescribed by the Comptroller of the Treasury and approved by the Attorney General (T.C.A § 8-19-101(b)(1)); blank copies of official bonds are available from the Comptroller of the Treasury, Division of Local Finance. Clerks are strongly urged to use only these approved forms. Bonds must be conditioned in the following manner (T.C.A. § 8-19-111):

> That if the said _____ (principal) shall:
>
> l. Faithfully perform the duties of the office of _____ (office) of _____ County during such person's term of office or continuance therein; and
>
> 2. Pay over to the persons authorized by law to receive them, all moneys, properties, or things of value that may come into such principal's hands during such principal's term of office or continuance therein without fraud or delay, and shall faithfully and safely keep all records in such principal's official capacity, and at the expiration of the term, or in case of resignation or removal from office, shall turn over to the successor all records and

> property which have come into such principal's hands, then this obligation shall be null and void; otherwise to remain in full force and effect.

Some counties also use so-called "blanket bonds" for all of the county officeholders. Even so, the clerk is ultimately responsible for securing his or her bond and should take steps to ensure that the bond is properly executed, approved, and filed (T.C.A. § 8-19-101(c))**.**

Filing of Official Bonds. Official bonds, including blanket bonds, are required to be filed in the office of the Comptroller of the Treasury or Secretary of State within forty days after election or within twenty days after the term of the office legally begins (T.C.A. § 8-19-115). Also, clerk's official bonds are recorded in the office of the register of deeds(T.C.A. § 8-19-103). Generally, the clerk of court presents the bonds of all officials to the register of deeds for recording and then sends the original bonds to the Comptroller of the Treasury's office (T.C.A. § 8-19-102(a), T.C.A. § 18-2-205). The register of deeds maintains a special book for the official bonds of the clerks of courts and other county officials (T.C.A. § 8-19-104).

A judge of the court which the clerk serves must examine the bonds to determine whether they conform to legal requirements and whether the sureties are good (T.C.A. § 18-2-207; § 18-2-210); any insufficiency must be corrected (T.C.A. §18-2-209; T.C.A. §18-2-210). If, within four months after election or appointment, the Comptroller has not received the bond, notice will be given to the judge who should have approved the bond (T.C.A § 8-19-203). Any clerk who fails in these bonding requirements vacates the office (T.C.A. § 8-19-117).

Cost of Bonds. The county pays the premiums for official bonds and registration fees for the bonds (T.C.A. § 8-19-106).

Special Bonds. Courts may require their clerks to give bonds covering property or funds they receive as a special commissioner or receiver (T.C.A. §18-2-202). The failure to execute a receiver bond does not subject the clerk to a penalty, and the clerk may still be liable on the regular bond for all property or money received as a special commissioner or receiver (T.C.A. §18-2-203).

Compensation of Clerks of Courts

As a general rule, the legislature passes a law each year to set the increase in compensation for clerks of courts and other officials within the statutory scheme, classifying the state's ninety-five counties according to population. The population figures used for determining the salary are taken from the most recent federal census. When a new census is taken, the officials have a right to the new salary as of the date the census is taken even though evidence of the new population is not available until later.[9]

Maximum Salary Schedule - 2000-2001. According to the County Technical Assistance Service, the following maximum salaries for trustees, clerks of circuit court, clerks of criminal court, clerks of general sessions court, clerks of juvenile court, clerks of probate court, clerks and masters, county clerks and registers of deeds were effective July 1, 2001: 1990 population of 400,000 or more - $88,155; 275,000 to 399,999 - $81,655; 250,000 to 274,999 - $76,155; 225,000 to 249,000 - $73,155; 200,000 to 224,999 - $70,155; 175,000 to 199,999 - $67,155; 150,000 to 174,999 - $64,155; 125,000 to 149,999 - $61,155; 100,000 to 124,999 - $58,155; 65,000 to 99,000 - $56,655; 50,000 to 64,999 - $54,155; 35,000 to 49,999 - $49,155; 23,000 to 34,999 - $47,155; 12,000 to 22,999 - $43,155 - $42,230; 5,000 to 11,999 - $37,655; less than 5,000 - $35,155.

Fee System or Salary System. Under present law, there are two basic methods of using and accounting for fees received by the court clerks and other officials. Under the older system, known as the "fee system," the official remits quarterly to the county trustee (for the county general fund) all of the fees, commissions, and charges collected in the preceding quarter in excess of the amount required to pay salaries of the officer, deputies, and assistants and the necessary office expenses. Under this system the official may retain fees in an amount equal to three times the monthly salary total (T.C.A. § 8-22-104).

The county legislative body may adopt an alternative system for any of the fee officers of the county, including the clerks of courts, or all of them (except the sheriff who is always under this second system). Under the alternative system, sometimes called the "salary system," the clerk makes a monthly payment to the county general fund for all of the fees, commissions, and charges collected. In return the county legislative body is required to pay, from the county general fund, the clerk's salary, the salaries of the deputies and assistants, and the authorized expenses of the office in twelve equal monthly installments, regardless of the fees received by the office (T.C.A. § 8-22-104). Under both systems, the fees remitted

to the trustee become part of the county general fund and may be appropriated for any proper county purpose.

Fee Office. Court Clerks' offices operate in whole or part from fees authorized by the Tennessee General Assembly. The schedule of fees is set forth in T.C.A. § 8-21-401. This Statute and allowable charges authorized should be an area every clerk should study and learn.

Deputies and Assistants. When the clerk, working full time, is unable to conduct the office business, the clerk may file a sworn petition in the appropriate court to obtain a court decree to employ deputies and assistants, setting out the necessity for them, the number required, and the salary that should be paid to each (T.C.A. § 8-20-101). The county executive is the defendant in the petition. A copy is served on the county executive, who must file an answer within five days either agreeing with or denying the matters stated in the petition. The court will then hold a hearing, and may allow or disallow the petition in whole or in part, determining the appropriate number and compensation of deputies and assistants (T.C.A. § 8-20-102). The order or decree fixing the number of deputies and assistants may be changed by increasing or decreasing the number of deputies and their salaries or by application to the court in the same manner; the clerk without formal application may decrease the number of deputies and assistants and their salaries where facts justify such action (T.C.A. § 8-20-104).

The clerk has the power to employ and discharge employees. The court decree merely sets the number and salary of such employees. It is the clerk's duty to reduce the number of deputies and assistants and/or their salaries when it can reasonably be done. The court having jurisdiction may, on motion of the county executive and reasonable notice to the clerk, have a hearing on the motion and reduce the number of deputies and assistants or their salaries (T.C.A. § 8-20-105).

Either party who is dissatisfied with the decree or order of the court has the right of appeal. Pending final disposition, the clerk may appoint deputies or assistants to serve until the case is finally resolved. These deputies will be paid according to the final determination of the court (T.C.A. § 8-20-106). The cost of these cases is paid out of fees of the office (T.C.A. § 8-20-107). A clerk should consider other office expenses, as well as salaries, when assessing the office needs. Decrees may be amended (T.C.A. § 8-20-104); however, no court order increasing expenditures will be effective for any fiscal year unless the petition was filed within thirty days after final adoption of the budget for that fiscal year, or, for a new officer, thirty days from taking office (T.C.A. § 8-20-101). Salary increases

can be provided for in the decree. As a practical matter, clerks should discuss their needs with the county executive prior to drafting the petition, which should be prepared by an attorney. This compensation for deputies and assistants must comply with the federal Fair Labor Standards Act (FLSA) and its minimum wage provisions, as well as other federal requirements.

If the clerk agrees with the number, compensation, and expenses of deputies and assistants which are set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition, the clerk can enter into a letter of agreement with the county executive, using a form prepared by the state comptroller. The letter of agreement is filed with the same court in which a petition would have been filed, but no litigation taxes, court costs, or attorneys fees can be charged in connection with the filing of the letter of agreement (T.C.A. § 8-20-101(c)). Under previous law, clerks of court whose offices did not turn over fees to the county general fund, but retained them to pay the expenses of the office, were not authorized to execute letters of agreement. Legislative amendments enacted in 1995, however, authorize all county officials to enter into letters of agreement to employ deputies and assistants (T.C.A. § 8-20-101(c)).

Where clerk of court fired deputy clerk when the deputy clerk announced her candidacy against her employer, absent allegations by the deputy clerk that firing was based on her political beliefs or her political affiliations, or that the clerk would have allowed another employee to run for the clerk position while continuing in her employment, the deputy clerk's termination was neutral in terms of the First Amendment. *Carver v. Dennis, 104 F.3d 847, 1997 Fed. App. 18 (6th Cir. 1997)*.

Certified Public Administrator - Education Incentive Payments. Statutory provisions contained in T.C.A. § 5-1-310, regarding certified public administrator - educational incentive payments provide that any full-time county officer enumerated in § 8-24-102 who is designated as a "certified public administrator" pursuant to § 5-1-308 shall receive an annual educational incentive payment from the state treasurer of $375. This amount shall be increased by a like amount each year until the official receiving such designation or continuing such designation shall receive an annual incentive amount of $1,500.

To be eligible for the educational incentive in any given year, the officer must apply to the state treasurer in the month of July of that year. Please contact the state treasurer for further details as to the necessary form and requirements as to completion of the continuing education requirements of the program and all

other requirements necessary to maintain the officer's designation as a "certified public administrator."

This incentive is available only to eligible full-time county officers making application therefore within the times specified.

The total amount paid to the officer by the state does not exceed one thousand five hundred dollars ($1,500) as to payment for professional training. If, in any given year, the amount appropriated in that year's general appropriations act is not sufficient to pay each eligible county officer in full, then the amount available shall be prorated by the state treasurer among such officers. Any unpaid portion shall not be carried forward to subsequent years.

The payment shall be considered as an incentive for the successful completion of educational training and shall not be considered in determining the county officer's average final compensation for retirement purposes pursuant to title 8, chapters 34-37. Further, the incentive payment shall not be used for the purpose of computing the salary or compensation of any other public official other than the officer receiving the incentive.

The incentive shall not be paid retroactively, but shall become effective for the fiscal year beginning July 1, 1998.

Each County is encouraged and authorized to provide in its annual budget for payment of an annual educational incentive to employees as defined in § 29-20-102(2) who attain the designation of a "certified public administrator" pursuant to § 5-1-308. In any county providing such an incentive, the county executive shall provide to the state treasurer the amount of any educational incentive paid in the county and the number of persons receiving such incentive which the state treasurer shall compile in an annual report.

Vacancies

Vacancies in offices which must be filled by elections, which include clerks of courts (excepting the clerks and masters), are to be temporarily filled by the respective county legislative bodies. The respective appointee serves until a successor is elected at the next countywide general election (T.C.A. § 5-1-104(b)(1)).

Causes of Vacancies. A clerk's office, as well as other public offices, is vacated for the following reasons:

1. Death,

2. Resignation, when permitted[10],

3. Removal of residency from the county of election,

4. A decision of a competent tribunal declaring the election void, the appointment void, or the office vacant,

5. An act of the General Assembly abridging the term of office, where it is not fixed by the Constitution,

6. The sentencing of the incumbent by a competent tribunal in Tennessee or any other state to the penitentiary, subject to restoration if the judgment is reversed, but not if pardoned, or

7. An adjudication of insanity (T.C.A. § 8-48-101).

Of course, if a clerk is ousted, fails to give bond, or fails to take the required oath, a vacancy occurs.

Procedure for the County Legislative Body to Fill a Vacancy. Vacancies in the offices of elected clerks are filled temporarily by the county legislative bodies. The person elected to fill the vacancy serves until the next county wide election occurring after the vacancy (T.C.A. § 5-1-104(b)(1)). Vacancies must be filled at a public meeting; the county clerk is required to give at least ten days notice to the members of the county legislative body (T.C.A. § 5-5-113). However, the county legislative body does not have to wait for this notice to act, but can fill the vacancy on information from other sources (T.C.A. § 8-48-108). A majority of all members of the county legislative body is necessary to constitute a quorum for the purpose of holding the election (T.C.A. § 5-5-109), as well for transacting other business. Additionally, the presiding officer of the legislative body must give public notice in a newspaper of general circulation in the county at least one week prior to the meeting (T.C.A. § 5-5-114). This notice must specify the office to be filled and the date, time, and place of the meeting. All citizens must be allowed "the privilege of offering as candidates" (T.C.A. § 5-5-115).

If a county legislative body member accepts the nomination as a candidate for the office of clerk, or any other county office when the office is being filled by the county legislative body (a vacancy), such county legislative body member is

automatically disqualified to continue in the office of county legislative body member and a vacancy exists on the county legislative body. If the county legislative body member does not win the election to fill the vacancy, then that former county legislative body member can be elected to fill the vacancy created by the member's nomination to the county office, but the office of county legislative body member has to be filled according to the statutory provision relating to vacancies of the body (T.C.A. § 5-5-115).

Temporary Vacancies. In the event a clerk and master is inducted into the military service, that office shall be filled by appointment by the chancellor of a qualified person to serve temporarily (T.C.A. § 8-48-205(4)). For all other county officials inducted into the military service, the county legislative body temporarily fills the vacancy (T.C.A. § 8-48-205). If a clerk of court dies, the clerk's deputy holds the office until the vacancy can be filled (T.C.A. § 18-1-401).

Temporary officers must take the required oaths of office and post the required bonds. The appointee receives the same salary and has the same powers and duties as the regular officeholder (T.C.A. § 8-48-208), but may not remove employees appointed by the regular o0fficial (T.C.A. § 8-48-209). Of course, the appointee must have the legal qualifications to hold office.

Temporary Absence of Clerks of Courts. All duly authorized deputies of clerks of courts may act in the absence of the clerk. There is no requirement that a chief deputy be designated and all duly authorized deputies can act during the absence (T.C.A. § 18-1-108).

Election of a Successor by the People. Any person appointed by the county legislative body to fill a vacancy in the office of an elected court clerk serves until a successor is elected by the voters of the county at the next general election (T.C.A. § 5-1-104(b)(1)).

Successor's Rights. After a successor is named, the new officeholder has the right to take possession of the property and records of the office. Any person who knowingly and willingly refuses to turn over the records to the new office holder is guilty of a Class C misdemeanor. Should records not be turned over, the new officer may make complaint to the circuit judge or a general sessions judge. If the judge is satisfied by the oath of the complainant that books or papers are being held, the judge may order the person who refuses to give them up to explain the reasons that the documents should not be surrendered (T.C.A. § 8-49-101; T.C.A. § 8-49-102). If the person charged makes an oath that he or she has turned over all property, all actions will cease. If the former officeholder refuses to take this

oath, he or she may be committed to jail until the property or papers are delivered. A search warrant may be issued so that property may be seized (T.C.A. § 8-49-103 through T.C.A. § 8-49-107).

Qualifying Deadlines

There are qualifying deadlines in regard to election to office and court clerks should contact their local county election offices for further information in this regard.

Disclosures and Election to Office

Campaign Financial Disclosure Act of 1980. Certain requirements relative to campaign contributions and expenditures apply to the office of elected clerks. Clerks and masters are not required to make these disclosures. Contributions include loans, loan security, promises, or other obligations, whether or not legally enforceable, but do not include volunteer services, nonpartisan activities designed to encourage persons to vote, the use of real or personal property, and the cost of invitations, food and beverages not exceeding $100, voluntarily provided at an individual's residence. Each candidate for local public office must file with the county election commission a statement that neither receipts nor expenditures exceeded $1000, or an itemized statement showing total receipts and expenditures, with amounts over $100 itemized (T.C.A. § 2-10-105) (T.C.A. § 2-10-107).

These disclosures must be filed not later than seven days before a primary election and a general election, and must include receipts and expenditures through the tenth day before the primary or general election (T.C.A. § 2-10-105(c)(1)). A statement covering dates from that report through the next forty-five days is due within forty-eight days after the election (T.C.A § 2-10-105(c)(4)*)* - See the statute for more specific requirements).

Financial Conflict of Interests Disclosures. Candidates or appointees to the office of elected court clerk are required to file conflict of interests disclosure statements with the county election commission within thirty days after the qualifying deadline for the election. Persons appointed to an elected office of clerk must file the disclosure statement within thirty days after the appointment (T.C.A. § 8-50-501 *et seq.*). These forms are available in the county election commission office and are prescribed by the registry of election finance. These forms, once filed, are public record (T.C.A. § 8-50-501(d)(1)). The county election registrar is authorized to enforce the disclosure requirements by assessing civil

penalties for failure to disclose in the amount of $25 per day for a period of thirty days (T.C.A. § 2-10-110(a)(1)).

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[1] *Robinson v. Briley, 374 S.W.2d 382 (Tenn. App. 1963).*

[2] *6 Tenn. Juris. Clerks of Courts, § 3 (1983) .*

[3] *Op. Tenn. Atty. Gen. 84-203 (June 21, 1984), regarding having the birthday required to qualify for an office twelve days*

[4] *Op. Tenn. Atty. Gen. 86-03 (January 14, 1986), relative to definitions of the terms "residents" and "citizens."*

[5] *In re Appointment of Clerk & Master, 670 S.W.2d 215 (Tenn. 1984).*

[6] *Marshall v. Sevier County, 639 S.W.2d 440 (Tenn. App. 1982); In re Appointment of Clerk and Master, 680 S.W.2d 215*

[7] *Op. Tenn. Atty. Gen. 85-128 (April 18, 1985); Op. Tenn. Atty. Gen. 89-103 (August 16, 1989); Shelby County Election C (Tenn. 1988); Op. Tenn. Atty. Gen. U89-104 (September 8, 1989).*

[8] *Kelley v. Story, 53 Tenn. (6 Heisk) 202 (1871); Douglas v. Neil, 54 Tenn. (7 Heisk) 438 (1872).*

[9] *Underwood v. Hickman, 162 Tenn. 689, 39 S.W.2d 1034 (1931).*

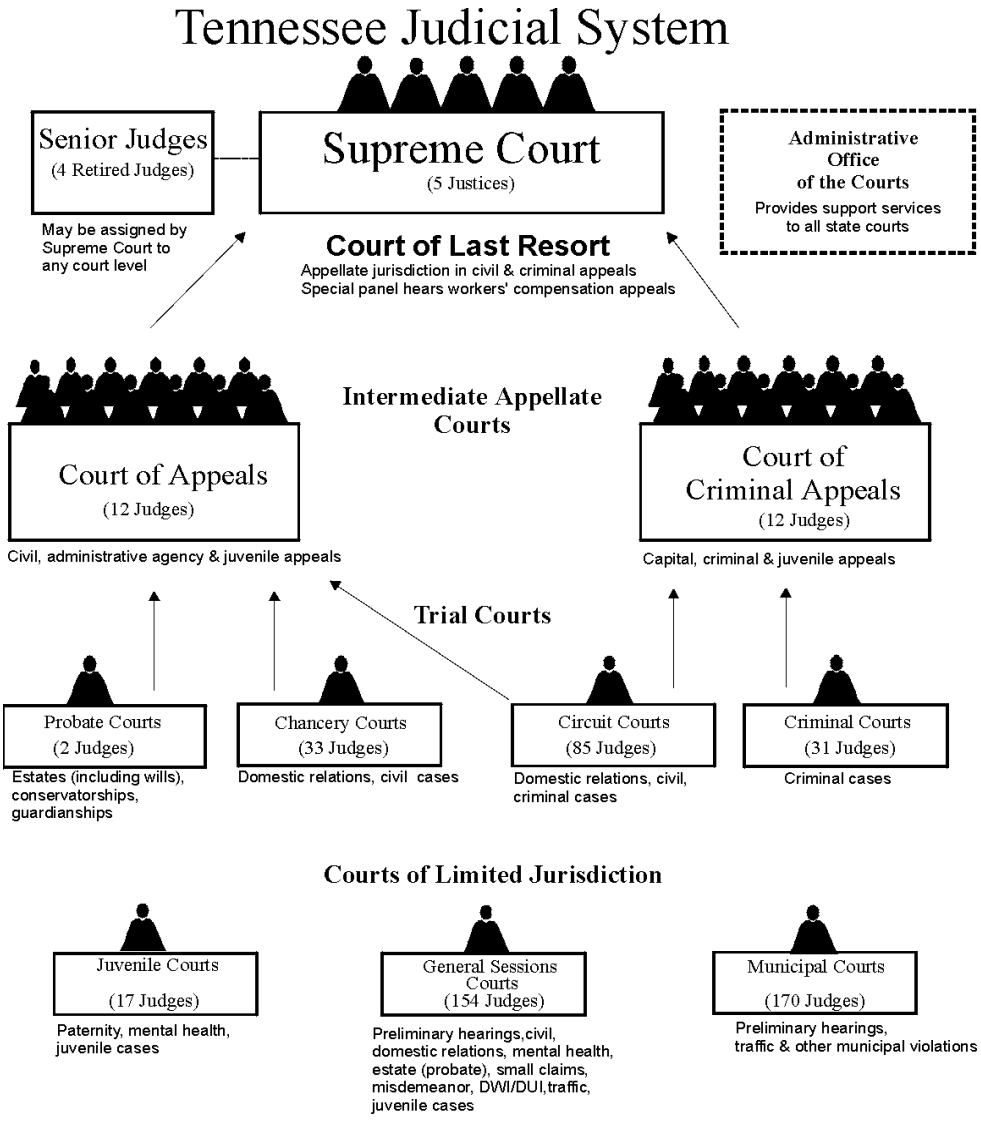
[10] *See Op. Tenn. Atty. Gen. U89-122 (October 24, 1989), relative to acceptance of resignations.*

II. OVERVIEW OF COURTS

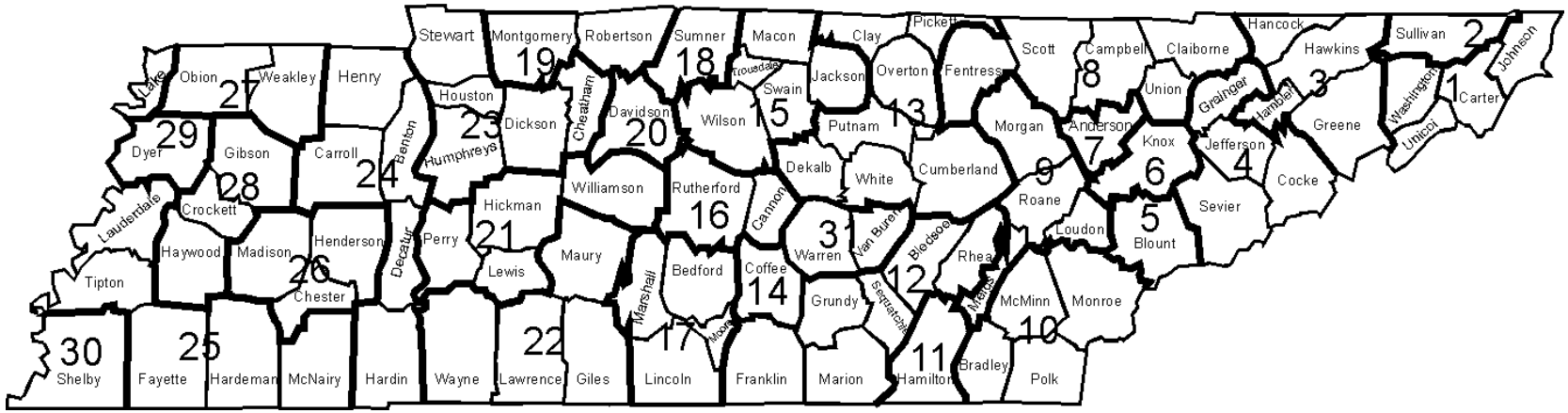
CHAPTER CONTENTS

II. OVERVIEW OF COURTS

The following charts provide a pictorial representation of judges by court level, judicial districts, and court clerks by court level. Listings of actual judge and court clerk personnel and their phone numbers are also included in Chapter VI of this publication. Information on various parts of the court system follow the charts.



The 31 Judicial Districts of Tennessee



COURT CLERKS OF THE TENNESSEE JUDICIAL SYSTEM

Appellate Courts

Supreme Court
Court of Appeals
Court of Criminal Appeals
Clerk
Nashville

Chief Deputy	Chief Deputy	Chief Deputy
Knoxville	Nashville	Jackson
I.	(1)	(1)

Trial Courts

Clerks & Masters	Circuit Court Clerks*	Criminal Court Clerks
(98)	(95)	(4)

Courts of Limited Jurisdiction

Juvenile Court Clerks	General Sessions Court Clerks*	Probate Court Clerks
(5)	(3)	(1)

* Many Circuit Court Clerks also serve as clerks for the Criminal Courts.
Additionally, many trial court clerks serve as clerks for General Sessions, Juvenile and Probate Courts.

TENNESSEE COURTS

The Tennessee Supreme Court

The highest state court is the Supreme Court which consists of five justices, no more than two of whom may reside in any one of the grand divisions of the State. The judges designate one of their own to preside as chief justice (Tenn. Const. Art. VI. § 2). Justice Riley Anderson was appointed in September '98 to a 4 year term.

The Constitution and state statutes impose the following requirements for Supreme Court Justices: thirty-five years of age (T.C.A. §17-1-101), a resident of the state for five years (TENN. CONST. art. VI, § 3), and licensed to practice law in Tennessee (17-1-106). Justices serve eight-year terms (TENN. CONST. art. VI, § 3).

Court of Appeals and Court of Criminal Appeals

Court of Appeals. The Court of Appeals is the appellate court for civil cases in Tennessee. The Court of Appeals consists of twelve judges of whom not more than four may reside in any one grand division of the state (T.C.A. §16-4-102).

Any Court of Appeals judge must be at least thirty years of age and must have been a resident of Tennessee for at least five years. Judges of the Court of Appeals are required to be "learned in the law," as evidenced by their admission to the practice of law in Tennessee (T.C.A. §16-4-102)(T.C.A. § 17-1-106). Appellate court judges are elected under the Tennessee Plan at the next general or regular judicial election held every eight years (T.C.A. § 16-4-102). Likewise, the term of office for a Court of Appeals judge is eight years (T.C.A. § 16-4-103).

The jurisdiction of the Court of Appeals is appellate only: it has no original jurisdiction (T.C.A. § 16-4-108(a)(1)).

Court of Criminal Appeals. The Court of Criminal Appeals was established by the General Assembly in 1967 pursuant to Article VI, Section 1 of the Tennessee Constitution.

The Court of Criminal Appeals consists of twelve judges of whom not more than four reside in any one grand division of the state. Any Court of Criminal Appeals judge must be at least thirty years of age, a resident of Tennessee for at least five years prior to election or appointment, and licensed to practice law in the state of Tennessee (T.C.A. § 16-5-102). The judges of the Court of Criminal Appeals are chosen according to the Tennessee Plan and run for election at the next general or regular judicial election held every eight years for a term of eight years (T.C.A. § 16-5-103(a)).

Like the other appellate courts, the jurisdiction of the Court of Criminal Appeals is appellate only; it has no original jurisdiction (T.C.A. §16-5-108). Its jurisdiction encompasses the review of final trial court judgments in the following cases (T.CA. §16-5-108):

1. Criminal cases, both felony and misdemeanor;

2. Habeas corpus and post-conviction proceedings attacking the validity of a final judgment of conviction or the sentence in a criminal case, and other cases or proceedings instituted with reference to or arising out of a criminal case;

3. Civil or criminal contempt proceedings arising out of a criminal matter;

4. Extradition cases.

Office of Appellate Court Clerk

The clerk is appointed by the justices of the Supreme Court for a term of six years and serves as clerk of the Supreme Court, Court of Criminal Appeals and Court of Appeals (T.C.A. § 18-3-101(a)). The clerk of the Supreme Court is located in Nashville with three chief deputy clerks appointed to supervise and coordinate the business of the Supreme Court and intermediate appellate courts in their respective divisions: Eastern-Knoxville, Middle-Nashville, and Western-Jackson. The office is responsible for the filing and tracking of records on appeal filed in the intermediate appellate courts and the Supreme Court (T.C.A. § 18-3-101(b)).

State Trial Courts[11]

The state trial courts were divided into thirty-one judicial districts in 1984 (T.C.A. § 16-2-506).

Circuit, chancery, and criminal court judges are elected for eight-year terms by the voters of the district or circuit to which they are assigned (TENN. CONST. art. VI, § 4). A judge must hold the following qualifications: (1) at least thirty years of age, (2) a Tennessee resident for five years, (3) a resident of the circuit or district for one year, (4) licensed to practice law in Tennessee, and (5) eligible under the general standards to hold public office (TENN. CONST. art. VI, § 4; T.C.A. § 17-1-106;T.C.A. § 8-18-101).

The circuit and criminal court clerk acts as the principal administrative aide to the circuit and criminal courts, providing assistance in the areas of courtroom administration and records management, docket maintenance, revenue

management, maintenance of court minutes, official communication, and various other court-associated duties (Title 18, Chapters 1, 2, and 4). The clerk is elected for a four-year term (T.C.A. §18-4-101). There is one circuit court clerk in each county.

Similarly, the clerk and master acts as the principal administrative aide to the chancery court, providing assistance in these same areas of courtroom administration and records management, docket maintenance, revenue management, maintenance of court minutes, official communication, and various other court-associated duties (Title 18, Chapters 1, 2 and 5). The clerk is appointed by the chancellor for a six-year term (T.C.A. §18-5-101).

General Sessions and Other Courts of Limited Jurisdiction

General Sessions Court. General sessions court judges must have the following qualifications: (1) thirty years old, (2) a Tennessee resident for five years, and (3) licensed to practice law in Tennessee (Tenn. Const. Art. VI. § 4) (T.C.A. §16-15-201), although a non-attorney may serve as a general sessions judge in limited situations (T.C.A. § 16-15-5005). A judge is elected to an eight-year-term (T.C.A. § 16-15-202). A county legislative body may not establish and fund additional part-time general sessions judges, although the Tennessee Code does allow private acts which establish part-time general sessions judges in class 1, 2 or 3 counties.[12] The circuit clerk acts as a general sessions clerk, unless a separate clerk is created by a private act (T.C.A. §16-15-301).

By statute, general sessions courts generally have county-wide jurisdiction which includes jurisdiction formerly exercised by justices of the peace in civil and criminal cases (T.C.A. § 16-15-501).

Juvenile Courts. Except in counties with a special juvenile court established by private act, general sessions courts are granted juvenile court jurisdiction (T.C.A. § 37-1-203). Every court having juvenile jurisdiction must have a sign in a conspicuous place identifying it as "Juvenile Court" (T.C.A. § 37-1-206). Only general sessions judges who are licensed to practice law in Tennessee may order commitment of a juvenile to the Department of Children's Services (T.C.A. § 37-1-203). If the judge is not licensed to practice in Tennessee, a lawyer-referee is appointed to handle such matters (T.C.A. § 37-1-107).

The Juvenile Courts are served by court clerks whose responsibilities are to oversee the administrative and clerical needs of the Juvenile Court. There are seventeen popularly elected juvenile courts statewide. In those counties where there are no special juvenile court clerks the responsibilities are performed by other elected or appointed clerks.

Probate Courts. Chancery court has exclusive jurisdiction to probate wills and to administer estates, unless provided otherwise by private act (T.C.A. § 16-16-201). The clerk and master exercises probate jurisdiction, unless otherwise provided; the most common alternative is a private act granting probate jurisdiction in the general sessions court and providing that the county clerk serves as probate clerk.

Appeal from General Sessions Court to a Court of Record. An action may be appealed from general sessions court to a court of record. In such an appeal the circuit court is instructed to supply any defect in the proceedings of the inferior jurisdiction, as though the suit had been commenced in circuit court (T.C.A. § 20-11-108). Similarly, no civil case originating in a general sessions court and carried to a higher court may be dismissed for an informality, but must be tried on its merits; the court will allow all amendments in the form of action, the parties, or the statement of the cause of action which may be necessary in order to reach the merits of the case, if these amendments are just and proper. In such a case the trial is *de novo* including damages (T.C.A. §16-15-729). On appeal from a judgment of a general sessions court, the appellant is required to give bond with good security "for the prosecution of the appeal or take the oath for poor persons" (T.C.A. § 27-5-103).

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[11] *Tennessee County Government Handbook, The University of Tennessee, County Technical Assistance Service (4th Editi*

[12] *Op. Tenn. Atty. Gen. 93-52 (August 9, 1993).*

TENNESSEE CLERKS' OF COURT CONFERENCE

The Tennessee State Court Clerks' Conference is the official organization of the circuit court clerks, clerks and masters, criminal court clerks, juvenile court clerks, probate clerks, and elected general sessions court clerks in the state. All clerks listed previously are members pursuant to T.C.A. §18-1-501. Deputies may be associate members of the conference.

The state court clerks' conference is authorized by statute to adopt, and from time to time, to amend such rules, regulations, or bylaws it considers necessary for the conduct of its affairs. Such rules, regulations, or bylaws shall include providing for the election of a president, vice president, president elect, secretary and other officers as the conference considers advisable. T.C.A. §18-1-502.

The president of the conference may call meetings at will, upon at least ten days' written notice, and shall call at least one meeting annually. The annual meeting shall provide educational seminars or training for the membership in addition to the business sessions. The conference may from time to time provide additional education seminars for its members in cooperation with the administrative director of the courts and the University of Tennessee's Center for Government Training (T.C.A. § 18-1-503).

The maximum number of individuals attending from a clerk office in a county is determined by the classification of counties as provided for in T.C.A. §18-1-504. If a clerk's office in a county does not have the maximum number of attendees, other clerks' offices in the county may send additional people to meetings up to the totals established by statute (T.C.A. § 18-1-504(b)).

Under T.C.A. § 18-1-506, the seminars shall be administered by the administrative director of the courts and the administrative directors' staff in cooperation with the conference. The State of Tennessee, through the Administrative Office of the Courts, shall pay for expenses incurred in administering the seminar. It is the official duty of each member of the conference to attend its meetings unless otherwise officially engaged, or for good and sufficient reasons (T.C.A. § 18-1-507(b)).

T.C.A. § 67-4-606 (6) provides that 1.64% of the proceeds of the privilege tax collected under T.C.A. § 67-4-602 shall be held in the state treasury and disbursed only upon request of the administrative director of the courts and used for the purpose of funding the state court clerk's conference established in T.C.A. §18-1-501. Such meetings are to be held in a state facility when practical.

It is the duty of the conference to give consideration to the enactment of such laws and rules or procedure as in its judgment may be necessary to the more effective

operation of the offices of the state court clerks. A committee of its members shall be appointed to draft suitable legislation and submit its recommendations to the general assembly and to monitor legislation otherwise submitted which impacts upon the operation of the state court clerks' offices. T.C.A. § 18-1-508.

THE ADMINISTRATIVE OFFICE OF THE COURTS

The purpose of the Administrative Office of the Courts is to assist the judicial branch of government in the supervision and administration of the court system in order to promote the orderly and efficient administration of justice in Tennessee.

The Administrative Office of the Courts (AOC) provides support services to the Tennessee Supreme Court and the entire state court system. The director, appointed by the Supreme Court, is the administrative officer of the courts and oversees the AOC. Duties of the office include preparing the court system's annual budget; providing judicial education, law libraries, computers, other equipment, training and technical support for judges and other court personnel; assisting judges with case assignments; administering payroll accounts for the state court system; conducting orientation for new judges; administering the official state criminal court reporters' system; providing assistance to judicial committees; compiling data; and dispersing funds to court appointed attorneys representing indigents.

The AOC Education Division currently administers two seminars annually for court clerks and their deputies. One seminar is held in May and a similar seminar is held in June at another location in order to accommodate all the clerks offices located statewide. In addition, a September seminar is held for the elected and appointed officials. It addresses the managerial aspects of the office. The U.T. Center for Government Training often holds classes in conjunction with the AOC at such meetings.

Travel costs for attending educational seminars are reimbursed according to Judicial Travel Regulations in effect at the time. See Addendum D for current regulations. Contact the AOC for updates in the future.

A copy of the AOC policy regarding sexual harassment is included at Addendum E. Contact the AOC if you have questions or need assistance in this area. Although the policy was primarily written for court employees in the state court system, it is available to all court personnel if required or requested.

Over 30 judicial boards, commissions and committees exist to provide assistance to the court system. The various groups were created either by legislative action or by court order. Some of the groups are in continuous operation and are staffed by full time personnel in the Administrative Office of the Courts. Court clerks serve on many of the boards, commissions and committees and assist in the planning for the current and future court system.

The administrative director of the AOC is Cornelia A. Clark and the deputy administrative director is Elizabeth A. Sykes. All of the departments of the AOC may be reached by calling 615/741-2687.

A booklet entitled "Understanding Your Court System: A Guide to the Judicial Branch" is included at Addendum A. This booklet is also available in Spanish. It can be downloaded from the AOC website, **www.tsc.mail.state.tn.us,** or you can contact the AOC for a copy.

JUDICIAL BOARDS, COMMISSIONS AND COMMITTEES

A. Supreme Court and Statutory Commissions

The following boards and commissions operate as advisory bodies to study issues affecting the administration of justice and make recommendations to the Tennessee Supreme Court. Members of the court are liaisons to many of the panels, which are staffed by the AOC.

1. Advisory Commission on the Rules of Practice and Procedure - Tenn. Code Ann. § 16-3-601

This commission meets periodically to study and make recommendations as to practice and procedure for civil, criminal and appellate rules. It also considers rules of evidence and rules of juvenile procedure. Nine members are appointed by the court and serve with non-voting members from the court system and law schools.

2. Board of Law Examiners - Tenn. Code Ann. § 23-1-101

The nine-member state Board of Law Examiners assists the Supreme Court in licensing attorneys. The board, an administrator and staff are responsible for conducting the Tennessee Bar Examination.

3. Board of Professional Responsibility - Supreme Court Rule 9

The Board of Professional Responsibility investigates alleged violations of the professional code for attorneys. An administrator and staff serve the board.

4. Commission on Continuing Legal Education and Specialization - Supreme Court Rule 21

The commission monitors CLE requirements and administers the specialization program for attorneys. The director and staff also serve the Tennessee Lawyer's Fund for Client Protection.

5. Commission on Alternative Dispute Resolution - Supreme Court Order

In 1992 the Tennessee Supreme Court created the ADR Commission to recommend alternative methods for settling some legal disputes without traditional adversarial courtroom proceedings. In 1996 recommendations of the panel resulted in Supreme Court Rule 31 establishing statewide court-annexed alternative dispute resolution.

6. Court of the Judiciary - Tenn. Code Ann. § 17-5-101

The Court of the Judiciary was created by the legislature to investigate and, when warranted, act on complaints against judges. The court may investigate the physical, mental, or moral fitness of a judge, the manner of performance of duty, the commission of any act, which may reflect unfavorably upon the judiciary or adversely affect the administration of justice. The court is composed of judges, attorneys and lay members. The court may dismiss the complaint or, where the charge is well founded, the court may conduct a formal hearing. At the conclusion of the hearing, the court may issue a formal reprimand, issue a cease and desist order, suspend the judge from the duties of office with pay for up to 30 days, or enter a judgment recommending removal from office. Appeals may be made to the Supreme Court. The clerk of the appellate courts serves as clerk of the Court of the Judiciary and provides staff support.

7. Tennessee Judicial Information System Advisory Committee - Tenn. Code Ann. § 16-3-803

The committee's members are appointed by the president of the Tennessee Court Clerks Association to advise the Supreme Court and review functional modifications to the judicial information system.

8. Tennessee Court Information System Steering Committee – Tenn. Code Ann. § 16-3-811

The committee includes six legislative members appointed by the speakers, three clerks from the Tennessee Judicial System Advisory Committee (TJISAC), two representatives from the comptroller of the treasury, and two representatives from the AOC. The AOC works with the steering committee to manage and control the scope of the TnCIS software development project.

9. Judicial Council - Tenn. Code Ann. § 16-21-101

The council was created by the legislature as an advisory body to receive, consider and take action on suggestions concerning the administration of justice. The General Assembly, judges, public officials, attorneys and others may submit suggestions. The members, including judges, legislators, attorneys, and lay members also may recommend changes in rules or laws.

10. Judicial Ethics Committee - Supreme Court Rule 9

The committee of judges was created by the Supreme Court to issue formal ethics opinions requested by judges. The committee operates continually to

provide guidance. Ethics opinions are available on the Internet at **www.tsc.state.tn.us** or from the AOC.

11. Permanency Planning Commission - Supreme Court Orders

The commission was created to oversee the federally funded Court Improvement Program, which assists courts with child dependency (abuse and neglect) cases. The commission formulated a plan that includes ensuring compliance with state and federal laws, improving the efficiency and effectiveness of court proceedings and providing more meaningful voices for parents and children.

12. State Law Library Commission - Tenn. Code Ann. § 10-4-101

The commission supervises state law libraries in the Nashville, Knoxville, and Jackson Supreme Court Buildings. The libraries serve both the judiciary and public.

13. Supreme Court Building Commissions - Tenn. Code Ann. § 16-3-701

The commissions consist of the chief justice, resident judges, the appellate court clerk and the administrative director of the courts. They supervise the three buildings.

14. Tennessee Code Commission - Tenn. Code Ann. § 1-1-101

The commission is composed of five members, including the chief justice, the attorney general and reporter, the director of legal services for the legislature, and two other members appointed by the chief justice. The commission directs the publication, sale, and distribution of an official compilation of the statutes, codes, and laws of the state.

15. Tennessee Judicial Selection Commission - Tenn. Code Ann. § 17-4-102

The commission was created by the legislature to assist the governor in filling vacancies on the appellate and state trial courts. When a judicial vacancy occurs, the commission receives applications, conducts a public hearing, interviews applicants, and submits three names to the governor for consideration in making an appointment.

16. Judicial Evaluation Commission - Tenn. Code Ann. § 17-4-201

This commission evaluates appellate judges and publishes reports on the performance of those seeking retention for a full term of office. These reports promote informed retention election decisions for voters.

17. Judicial Performance Program Committee - Supreme Court Rule 27

This committee administers the day-to-day operation of the Judicial Performance and Evaluation Program in accordance with Supreme Court Rule 27. It oversees trial judge evaluations for self-improvement and provides information enabling the Judicial Evaluation Commission to perform objective evaluations and issue reports concerning the performances of appellate judges.

18. Lawyer's Fund for Client Protection – Supreme Court Rule 25 § 4.01

This fund was established by Supreme Court Rule to reimburse claimants for losses caused by any dishonest conduct committed by lawyers duly licensed to practice in this state.

19. Post-Conviction Defender Commission – Tenn. Code Ann. § 40-30-303

This commission is charged with providing for the representation of any person convicted and sentenced to death in this state who is unable to secure counsel due to indigence.

B. Judicial Conference Committees

Presidents of the three conferences appoint members to various committees, such as Bench/Bar Relations, Budget and Continuing Education.

COURT OF THE JUDICIARY

The Court of the Judiciary was created by the Tennessee General Assembly to provide a method for inquiring into the physical, mental or moral fitness of a judge; the manner of a judge's performance of duty; or the commission of any act which may reflect unfavorably upon the judiciary or adversely affect the administration of justice. The court is composed of judges, attorneys and lay members. Charges, which must be investigated, may be presented to the court by any person.

If the court determines a charge is well founded, but is a relatively minor offense, it may issue a cease and desist order. If the court determines a charge is well founded and involves a major offense, it may conduct a formal hearing. At the conclusion of the formal hearing the court may take the following actions: dismiss the charges; issue a formal reprimand, issue a cease and desist order; suspend the judge from the duties of office with pay for up to thirty days, or, enter judgment recommending removal of the judge from office. The judgment of the court may be appealed to the Tennessee Supreme Court.

All Tennessee judges, including, but not restricted to, appellate, trial, general sessions, probate and any other judge sitting on or presiding over any court created by the general assembly or by the express or implied authority of the general assembly, may be disciplined by the Court of the Judiciary for unethical conduct. The authority of this body has been interpreted to also cover court clerks when acting in judicial capacities.

If citizens desire to file complaints against any judge, the court clerk should provide forms for such purposes, or direct persons to the Administrative Offices of the Court. A brochure outlining the Court of the Judiciary and a copy of the complaint form are included at Addendum B. You may contact the Administrative Office of the Courts for further information regarding this body or for procedures as to filing complaints.

Following is a listing of the judicial canons comprising the Code of Judicial Conduct for Tennessee as set out in Rule 10 of the Rules of the Tennessee Supreme Court.

CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

CANON 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

CANON 4. A Judge Shall Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

CANON 5. A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.

III. DUTIES

CHAPTER CONTENTS

III. DUTIES

The basic statutes describing the powers and duties of the clerks of courts are found in Title 18 of the Tennessee Code Annotated. There are general laws governing all clerks of court as well as office-specific statutes for clerks of particular courts.

Powers[13]

The enumerated powers listed below are based on historical authority of the office of clerks. The use and implementation of these powers vary from county to county. Many of these powers may be archaic and subject to local custom and practice.

In order to fulfill statutory responsibilities, all clerks of court are vested with the following powers:

1. To administer oaths and take affidavits in all cases in which the authority to administer the oath is not confined to some other officer; this power may be exercised either in vacation or term time;

2. To take depositions to be read as evidence in any judicial proceeding in this or any other state;

3. To take probate of the attendance of witnesses, and issue tickets in civil as well as criminal cases, at any time between the commencement and decision of a cause;

4. To appoint deputies with full power to transact all the business of the clerk, after the deputy has taken an oath to support the Constitution and laws of this state, and faithfully to discharge the duties of deputy clerk of the court for which the deputy acts;

5. To receive the amount of any judgment or decree rendered in the court of which they are clerks, either before or after the issue of execution;

6. To participate in a cooperative child support collection system; and

7. To exercise such other powers as are, or may be, conferred upon them by law (T.C.A. §18-1-108).

General Overview of Duties[14]

In general terms, it is the duty of each clerk to attend the court and perform all necessary clerical functions (T.C.A. §18-1-101). Furthermore, it is the duty of each clerk of court to fulfill the following duties:

1. To sign all summons, writs, subpoenas, executions, and process issued from the court, and to endorse on the back the date of issuance;

2. To keep the several dockets required by law in the respective courts, and to keep a rule docket, in which shall be entered the names of complainants and defendants in full, the names of attorneys, a minute of the date of issuance and return of process, with return, and a note of all orders and proceedings made at office;

3. To refuse to change the style of any case, or papers in that case, without permission of the chancellor or judge presiding, after the case has been docketed;

4. To keep an execution docket, in which shall be entered, within the time after the adjournment of each court prescribed for issuing executions, all judgments or decrees, in the order of their rendition, with the names of all the plaintiffs and defendants in full, the day and year of rendition, the amount of the recovery and the amount of costs, the character and number of the execution, the date of its issuance and to what county issued, the person to whom delivered and the date of delivery, the date and substance of the return, and the dates and amount of money paid into and paid out of the clerk's office;

5. To keep a well-bound book, in which shall be entered the minutes of each day's proceedings during the session of the court, in the order in which they are made;

6. To keep in well-bound books, within six months after the final determination of any suit or prosecution, such proceedings as the clerk is required by law to enroll;

7. To make and keep indexes, direct and reverse, for all books and dockets required to be kept by the clerk;

8. To keep all the papers, books, dockets, and records belonging to the clerk's office with care and security; the papers filed, arranged, numbered and labeled so as to be of easy reference; and the books, dockets, and records properly lettered; and to allow parties to inspect the records free of charge;

9. To attend court during the session, with all the papers belonging to the term, so filed as to be of easy reference; to keep in the courthouse during each session the execution docket for the two preceding terms; and to administer all oaths and affidavits in relation to causes or proceedings pending;

10. On application and payment of the legal fees, to make out and deliver a correct transcript, properly certified, of any paper or record in the office;

11. To perform such duties in regard to the state and county revenue as are prescribed by law, under the provisions of the Tennessee Code Annotated;

12. To issue execution within the time prescribed by law (T.C.A. § 26-1-201 through T.C.A. § 26-1-203); and

13. To perform such other duties as are, or may be, by law required of the clerk (T.C.A. §18-1-105).

14. A 1999 amendment to T.C.A § 18-1-105 added the requirement that it is the duty of the clerks to install and maintain the Tennessee Court Information System (TnCIS) as provided by the Administrative Office of the Courts (AOC) or a functionally equivalent computer system. See T.C.A. §18-1-105(d) for further details including the exception made for any court clerk office having a significant investment in an existing computer system.

Adoptions

Adoption laws in Tennessee have changed dramatically in the past few years. The following is a summary and overview of recent amendments added through the 1998 Session of the General Assembly.

Best Interests. The law expressly recites that the best interests of children are protected by the Constitutions of both the United States and the State of Tennessee. In cases of conflict between the interest of adults and those of children, courts are instructed to favor (not merely consider) the best interests of the child (T.C.A. § 36-1-101(d)).

Biological Fathers' Rights. Biological fathers are required to assert their parental interests within 30 days of learning of their alleged paternity, and hearings on termination of parental rights and other procedural aspects of adoption are generally required to be held on an expedited, priority basis, often within 30 days of the time contested rights are asserted.

Appeals are required to be heard on an expedited, priority basis, and a one year statute of repose is included, which forbids collateral attack on a final order of termination or of adoption for any reason whatsoever after one year following the final order.

Initiation for the termination of biological parents' rights by court proceedings are based upon the following grounds (among others)(T.C.A. § 36-1-113):

- abandonment;
- substantial noncompliance with a permanency plan for children in foster care;
- removal from a home on the ground of neglect or abuse for a period of 6 months or greater, and these conditions continue to persist;
- severe child abuse;
- an unmarried person's failure to pay, without good cause or excuse, reasonable expenses or child support; or has failed to visit;
- an unmarried person's failure to manifest an ability and willingness to assume legal and physical custody of a child;
- a risk of substantial harm to the physical or psychological welfare of a child born out of wedlock;
- the failure of an unmarried father to file a petition to legitimate a child within 30 days of notice of alleged paternity;
- Incarceration for 10 or more years if child is under age 8 at time of sentencing;
- Incompetent to adequately parent child as a result of impaired mental condition;
- Parent has been sentenced to more than two years imprisonment for conduct against the child, sibling of child or other child living in the home; or
- Custodial parent has been convicted of or found civilly responsible for the wrongful and intentional death of the child's other parent.

In addition, a man who has established paternity of a child born out of wedlock, may nevertheless have his parental rights terminated if he is found to meet any of the other termination criteria mentioned above.

Tennessee's Putative Father Registry has been amended to require registration prior to or within 30 days after the birth of a child and to file change of address information within 10 days of any such change (T.C.A. § 36-2-318(e)(3); T.C.A.§ 36-2-318(f)(1)(2)). Registration will subject the registrant to court ordered child support,

medical payments and other payments and damages in connection with the paternity of the child. A person who is registered has 30 days from the receipt of the notice of a pending adoption or termination proceeding to file a petition to establish paternity or to intervene for the purpose of establishing a claim to paternity (T.C.A. § 36-2-318(j). The failure to intervene is a ground for termination of parental rights (T.C.A. § 36-1-113(g)(8)(A)(vi)).

Final orders of adoption will be entered after 6 months of the filing of a petition, and may not be challenged for any reason after 1 year of their entry (T.C.A. § 36-1-122(b)(2)).

Abbreviated preliminary home studies all required before placement in an adoptive home with complete home studies required within 60 days of such placement (T.C.A. § 36-1-111(t)(3)).

Other State Agencies. Out-of-state agencies are required to subject themselves to the laws of the State of Tennessee in connection with any adoption originating or occurring in Tennessee.

Adoption Records. Effective July 1, 1996, adoption records (as defined in the statute) will be available to all adoptees ages 21 and over (or their legal representatives) (T.C.A. § 36-1-130(a)), but birth parents may file a "contact veto" on a Contact Veto Registry, on behalf of themselves, their immediate families, and their descendants (T.C.A. § 36-1-128). In doing so, a birth parent may veto contact by any person who requests information from the adoption records. The contact veto may be modified, rescinded, or reinstated at any time.

A violation of a contact veto causing injury to the person whose name was obtained is a Class A misdemeanor. Any person who contacts or causes to be contacted a person who filed a contact veto is guilty of a Class B misdemeanor (T.C.A. § 36-1-138(g)). Further, a violation of a contact veto may give rise to a civil cause of action including compensatory and punitive damages and attorney fees (T.C.A. § 36-1-132). Birth parents may register contact vetoes or contact instructions at the time of surrender of parental rights and at any time thereafter. Siblings, parents, spouses, and children of biological parents also may file contact vetoes, as may adoptees and their familial relations.

Adoption records in existence on March 16, 1951, (and records of persons who had been adopted through or in the custody of the Tennessee Children's Home Society) were statutorily opened to adoptees and their relations on January 1, 1996 without restriction (T.C.A. § 36-1-127).

Effective July 1, 1998, the Department of Children’s Services will have established an Advanced Notice Registry (T.C.A. § 36-1-304). An eligible person

may request the department to provide notification prior to the release of adoption records (T.C.A. § 36-1-301). If the department has received such a request, it shall delay the release of the adoption records for a period of fifteen (15) days from the mailing date of the notice regarding the impending release of the adoption records (T.C.A. § 36-1-302.)

Administrative Fee

Right to Counsel. A child, under T.C.A. § 37-1-126 or a defendant under § 40-14-103, who is provided with court-appointed counsel pursuant to these sections, shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars ($50.00). The administrative fee shall be assessed one (1) time per case and shall be waived or reduced by the court upon a finding that the child and the child's parents or legal guardians or the defendant in a criminal case under § 40-14-103 lacks financial resources sufficient to pay the fee in such amount. The fee may be increased by the court to an amount not in excess of two hundred dollars ($200) upon a finding that the child, or the child's parents or legal guardians, or the defendant in a criminal case, possess sufficient financial resources to pay the fee. The administrative fee shall be payable, at the court's discretion, in a lump sum or in installments; provided, the fee shall be paid prior to disposition of the case or within two (2) weeks of appointment of counsel, whichever shall first occur. Prior to disposition of the case, the clerk of the court shall inform the judge whether the administrative fee has been collected. In the case of a child, failure to pay the administrative fee assessed by the court shall not reduce or in any way affect the rendering of services by court-appointed counsel; provided, that willful failure to pay such fee may be weighed by the court when determining appropriate disposition of the child if the court finds that the child engaged in delinquent or unruly conduct and is, therefore, in need of treatment and/or rehabilitation. Under § 40-14-103, failure to pay the administrative fee may be considered by the court as an enhancement factor when imposing sentence if the defendant is found guilty of criminal conduct.

The administrative fee is separate from and in addition to any other contribution or recoupment assessed pursuant to law for defrayal of costs associated with the provision of court-appointed counsel. The clerk of the court shall retain a commission of five percent (5%) of each dollar of administrative fees collected and shall transmit the remaining ninety-five percent (95%) of each such dollar to the state treasurer for deposit in the state's general fund.

If the administrative fee is not paid prior to disposition of the case, then the fee shall be collected in the same manner as costs are collected; provided, however, upon disposition of the case, moneys paid to the clerk, (including any cash bond

posted by the defendant in a criminal case or on behalf of a child under § 37-1-126), shall be allocated to taxes, costs and fines and then to the administrative fee and any recoupment ordered. The administrative fee and any recoupment or contribution ordered for the services of court-appointed counsel shall apply and shall be collected even if the charges against the defendant or child, as the case may be, are dismissed.

Under § 40-14-103, as part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the administrative director of the courts. The report shall indicate the following:

(A) Number of defendants for whom the court appointed counsel;

(B) Number of defendants for whom the court waived the administrative fee;

(C) Number of defendants from whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer.

Under § 37-1-126, as part of the clerk's regular monthly report, each clerk of court, who is responsible for collecting administrative fees pursuant to this section, shall file a report with the court and with the administrative director of the courts. The report shall indicate the following:

(A) Number of children for whom the court appointed counsel pursuant to this section;

(B) Number of children for whom the court waived the administrative fee;

(C) Number of children from, or on behalf of, whom the clerk collected administrative fees;

(D) Total amount of commissions retained by the clerk from such administrative fees; and

(E) Total amount of administrative fees forwarded by the clerk to the state treasurer.

Bail Bonding Agents

Under § 40-11-402, beginning on July 15, 1997, each bail bonding agent shall file annually, along with the first semiannual report as described in § 40-11-303, a certificate of compliance of continuing education with the clerk of the criminal or civil court of each county in which the agent is furnishing bail or bonds securing costs and fines. This certificate shall show in detail the names, locations, dates and hours of each course attended, along with the signature of the agent attesting that all continuing educational requirements have been completed.

Clerk Reporting Requirements

If an agent does not obtain the required eight (8) continuing education hour credits within each12 month period as described in § 40-11-401, and have the necessary certificate of compliance filed with the clerk of the court by January 15 of each year, the clerk shall, by certified mail, notify the agent that the agent is not in compliance with the continuing education requirements of this part and of the number of hours such agent lacks being in compliance. If the agent has not furnished the clerk with a certificate of compliance with such continuing education requirements within sixty (60) days of receiving the notice of noncompliance, the clerk shall notify the judge of the court who shall then suspend the agent from furnishing bail or bonds securing costs and fines, and remove the agent's name from the list of qualified and approved professional bondsmen, as described in § 40-11-124, until the agent completes the continuing education credits and properly files the required certificate with the court.

The Tennessee Association of Professional Bail Agents provides all continuing education courses, and issues certificates of compliance to certify attendance of the agents to the clerks of the courts.

Certification and Authentication

The records and judicial proceedings of any court of any state, or their copies, shall be proved or admitted in other courts within the United States and its territories and possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the attestation is in proper form. Such acts, records, and judicial proceedings so authenticated shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage

in the courts of such state, territory, or possession from which they are taken (28 United States Code Annotated § 1738).

Child Support

See T.C.A. § 36-5-115 et. seq. for current code provisions regarding support cases and the duties of court clerks.

Civil Actions

Importance of Filing Date. The date of the filing of a complaint in a civil action is significant for statute of limitations purposes. Moreover, a number of rules in the Tennessee Rules of Civil Procedure refer to the date of the filing of the action:

*Rule 4.01 requires the clerk upon the filing of the complaint to issue summons and cause service.

*Rule 13.01 excepts a counterclaim from being compulsory "if at the time the action was commenced the claim was the subject of another pending action."

*Rule 14.01 permits a defendant, after commencement of the action, to bring in a third party who may be liable for all or part of the plaintiff's claim.

*Rule 30.01 prescribes the time period, from the commencement of the action, during which depositions may be taken. Similar references are made in Rule 31.01 (depositions upon written questions), Rule 33.01 (interrogatories to parties), Rule 34.02 (production of documents, etc.), and Rule 36.01 (requests for admissions).

*Rule 56 permits a motion for summary judgment any time after the expiration of thirty days from the commencement of the action.

*Rule 65.03 permits a restraining order to be granted at the commencement of the action.

Commencement of a Civil Action. All civil actions are commenced by filing a complaint with the clerk of court (T.R.C.P. Rule 3). The date of the commencement of the action is significant for purposes of statutes of limitation. If an action is not filed until after the statutory period for filing has run, the action

may be dismissed and the plaintiff may lose the cause of action. The date the defendant is served is also significant. Rule 3 states in pertinent part:

An action is commenced within the meaning of any statute of limitations upon such filing of a complaint, whether process be issued or not issued and whether process be returned served or unserved. If process remains unissued for 30 days or is not served within 30 days from issuance, regardless of the reason, the plaintiff cannot rely upon the original commencement to toll the running of a statute of limitations unless the plaintiff continues the action by obtaining issuance of new process within one year from issuance of the previous process or, if no process is issued, within one year of the filing of the complaint.

Although there is no officially required form for a summons, the Advisory Commission Comment to the 1992 amendment suggests a form. Some clerks by local court rule may want to require lawyers to file a summons - not to toll the running of a statute of limitations, but rather to assist the clerks' workloads. Other clerks may want to handle the chore themselves. Either position is appropriate under revised Rule 3. "Commencement" for statute of limitations purpose would occur on the day the complaint is filed, regardless of the method chosen for preparation of a summons. Deletion of the requirement of filing a summons in addition to a complaint returns the requirement for commencement to pre-1992 status. Note that Rule 4.01, both then and now, requires the clerk to issue a summons "forthwith" once a complaint is filed (unless there is a waiver under Rule 4.07). Moreover, the amended rule does not prevent a lawyer from filing a summons with the clerk.

The 2000 Advisory Commission Comment to T.R.C.P. 3 provides that a complaint filed by a pro se litigant incarcerated in a correctional facility is governed by the prisoner-filing provision in Rule 5.06.

Tennessee Code Annotated Section 26-2-114 adds the requirement that all leading process include notice to the defendant that Tennessee law provides a four thousand dollar debtor's equity interest personal property exemption from execution or seizure to satisfy a judgment.

Rule 4 of the Tennessee Rules of Civil Procedure provides that upon the filing of the complaint the clerk shall immediately issue the required summons and cause it, with necessary copies of the complaint and summons, to be delivered for service to any person authorized to serve process (any person not a party and at least 18 years of age). The process server must also be identified by name and address on the return. The summons shall be issued in the name of the state of Tennessee, be dated and signed by the clerk, and contain the name of the court and county, the title of action, and the file number. The summons shall be directed to the defendant, shall state the time within which the Rules of Civil Procedure require the defendant to appear and defend, and shall notify the defendant that in case of failure to appear, a default judgment will be rendered for the relief demanded in the complaint. The summons shall state the name and

address of the plaintiff's attorney, if any; otherwise it shall state the plaintiff's address. When process is served by mail, the original summons, properly endorsed, and the return receipt are filed with the clerk.

The Tennessee Supreme Court has considered whether a cause of action is barred by a statute of limitations if the complaint is filed within the time prescribed by statute but the summons is not issued until after the time has expired. The Court concluded that the summons need not be issued simultaneously with the filing of the complaint in order to toll the running of the statute, but it must be issued "forthwith" - that is, "within a reasonable time after the complaint is filed."[15]

The statute of limitations is not tolled by the plaintiff's mere filing of the complaint if the plaintiff files the complaint with insufficient information for the clerk's office to issue process to the defendant.[16]

If a Summons is Not Served. A summons must be served within 30 days or returned unserved (T.R.C.P. Rule 4.03(1)). When a summons is not served or not returned within thirty days of issuance, a plaintiff who wishes to rely upon the original commencement of the action as a bar to the running of a statute of limitations must obtain new process from time to time as provided in Rule 3. If the suit is not properly recommenced, the savings statute (T.C.A.§28-1-105) is inapplicable.[17]

Depending on local practice, in some counties a court may not notify attorneys of a summons which has been returned marked "Not To Be Found in My County." In those counties, an attorney wishing to know if a summons has been returned unserved must check the books in the clerk's office.

As a general rule, civil warrants issued by a general sessions court must be returned within 60 days of the date of issuance. However, a civil warrant issued by the general sessions court must be returned within 30 days if the court is exercising jurisdiction similar to that of a circuit or chancery court or if the warrant is counterpart process. Therefore, a local rule setting a time limit in which general sessions civil warrants must be returned is pretermitted by these requirements.[18] A default judgment entered against a defendant who was never served with process deprives the defendant of the fundamental constitutional right of due process (TENN. CONST. art. I, § 8; U.S. Const. Amend. V). Such a judgment is void and may be set aside under Rule 60.02(3) or by independent action.

Publication for a Non-Resident Defendant. Frequently, a complaint filed in the clerk's office requires service of process by publication for a non-resident defendant. It is the duty of the clerk to see that this is done according to law. Publication for a non-resident defendant is used only where the address of the defendant is unknown and should allege that the residence of the defendant is

unknown and cannot be ascertained upon diligent inquiry (T.C.A. § 21-1-203(5)). The publication shall be for four consecutive weeks in the newspaper mentioned in the court order or otherwise designated by the rules of court. It should contain the names of the parties, the style of the court in which proceedings are held, and the name of the place where the court is held (T.C.A. § 21-1-204).

Where publication is made for a non-resident defendant, it is the duty of the clerk to mail a copy of the complaint or, after the first publication, mail a copy of the newspaper clipping containing such publication to the non-resident defendant at his last known address. It should be sent by certified or registered mail, return receipt requested (T.C.A. § 21-1-205).

Court clerks should be aware of a constitutional standard for publication afforded to indigents. The leading case is *Dungan v. Dungan*, 579 S.W. 2d 183, (Tenn 1979). This case provides for publication by posting of local notice in lieu of newspaper publication.

Requirement of Cost Bond. No leading process shall issue unless the plaintiff gives security for the successful prosecution of the suit, or, in case of failure, for the payment of all costs and damages which may be awarded against the plaintiff (T.C.A. § 20-12-120). In practice in most counties, the attorney simply signs as plaintiff's surety for the costs of the action. A surety is one who undertakes to pay the court costs in the event the principal fails to do so. Local rules may require that a cost bond contain the name, address, place of employment, and employment address of each principal, and the name, address, and signature of the surety. Cost bond forms may be furnished by the office of the clerk of court.

Paupers Oath Instead of Cost Bonds. An exception is made to the requirement for a cost bond for the plaintiff who is a resident of Tennessee and sues *in forma pauperis* (T.C.A. § 20-12-127 *et seq*). The person taking the pauper's oath must take and sign the following oath in writing in addition to filing an affidavit of indigency.

T.C.A. § 20-12-127 provides:

> (a) Any civil action may be commenced by a resident of this state without giving security as required by law for costs and without the payment of litigation taxes due by;
>
> 1) Filing the following oath of poverty:
>
> *"I, _____, do solemnly swear under penalties of perjury, that owing to my poverty, I am not able to bear the expense of the action*

which I am about to commence, and that I am justly entitled to the relief sought, to the best of my belief." , and

2) Filing an accompanying affidavit of indigency as prescribed by court rule.

(b) The filing of a civil action without paying the costs or taxes or giving security for the costs or taxes does not relieve the person filing the action from responsibility for the costs or taxes but suspends their collection until taxed by the court.

Setting Case for Trial. Under Rule 40 of the Tennessee Rules of Civil Procedure, a case may be set for trial with or without the request of the parties, but in either case due process requires that the parties be notified. Rule 40 leaves the details of the procedure for setting cases for trial to statute and local rule.

Tennessee Code Annotated, Section 20-8-101 provides the general guidelines:

> *(a) The clerk shall enter causes upon the clerks's trial docket in the order in which they become ready for trial, giving the cause first ready for trial, either by due course of law or consent of parties, priority of position on the docket.*
>
> *(b) If a number of causes become ready for trial at the same time, they shall be entered on the docket in the order of their commencement.*

As cases are called on the docket they must be either tried, dismissed, or continued.[19]

Entry of Judgment

Under Tennessee Rules of Civil Procedure, Rule 58, the entry of judgment or the entry of an order of final disposition is effective when the clerk marks the judgment as filed for entry. The rule was amended effective July 1, 1993, to state that in order to be filed for entry the judgment must contain one of the following:

(1) the signatures of the judge and all parties of counsel;

(2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.[20]

The critical act is the filing of the signed judgment with the clerk - not the rendition of judgment in open court or the clerk's entry of the judgment on the docket book.[21] The date of the entry of judgment is important because on that date, unless otherwise ordered by the court, the judgment becomes effective and the time period for making post-trial motions and for filing notices of appeal begins to run (T.R.C.P. Rules 58, 59, 60, and Rule 4(a) Tennessee Rules of Appellate Procedure). In the case of a voluntary nonsuit pursuant to Rule 41.01, the one year period allowed by the savings statute (T.C.A. § 28-1-105) begins to run on the date the order is entered.

Rule 58 (as amended in 1997) imposes other duties on the clerk:

> *When requested by counsel or pro se parties, the clerk shall mail or deliver a copy of the entered judgment to all parties or counsel within five days after entry; notwithstanding any rule of civil or appellate procedure to the contrary, time periods for post- trial motions or a notice of appeal shall not begin to run until the date of such mailing or delivery. In the event the residence of a party is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Following entry of judgment, the clerk shall make appropriate docket notations and shall copy the judgment on the minutes, but failure to do so will not affect validity of the entry of judgment.*.

Clerks must also examine local rules pertaining to the entry of orders and judgments.

Errors

Clerical Mistakes. Rule 60.01 is designed to afford relief from clerical mistakes and errors arising from oversight or omission.[22] To be correctable under Rule 60.01, the error cannot be one of judgment or misinformation. It must be the sort of error that a clerk or secretary might commit in transcribing the document, although it may have been committed by the judge, attorney, or the jury foreman as well as by a secretary or a clerk.[23] Ordinarily, the mistake is either a misnomer or an error in spelling or in mathematical computation.[24]

Judgments and orders containing clerical mistakes and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of any party. Rule 60 fixes no time limit. Corrections may be made at any time before an appeal is docketed. Thereafter, during the pendency of the appeal, the trial court may make these corrections with leave of

the appellate court.[25] Rule 60.01 may be applied, however, only to errors in a judgment which has already been entered. The rule does not provide for the entry of a judgment which, by mistake, was not entered on the date the judge intended.[26] The remedy for this omission is an entry of the judgment *nunc pro tunc*.

Nunc Pro Tunc. Failure to enter a judgment may be remedied by an entry of the judgment *nunc pro tunc*. Black's Law Dictionary (5th Ed. 1979) defines this Latin phrase:

Now for then. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e., with the same effect as if regularly done. Nunc pro tunc entry is an entry made now of something actually previously done to have effect of the former date; office being not to supply omitted action, but to supply omission in record of action really had been omitted through inadvertence or mistake.

The error justifying a *nunc pro tunc* entry must have been due to the inadvertence or mistake of the court, not counsel.[27] Moreover, as a prerequisite to a *nunc pro tunc* entry there must exist some written notation or memorandum indicating the intent of the trial court to enter the judgment on the earlier date.[28]

Escheat of Funds

A court clerk may hold unclaimed or apparently abandoned funds from several sources. For instance, a court clerk may hold funds in cases in which money was paid into court for unknown heirs or parties who cannot be located; money may be paid into court on delinquent tax sales where the purchase price exceeds the taxes, interest, penalties, and cost, the former owners of the property have not claimed the excess funds, and such person cannot be located.

A court clerk should make a reasonable effort to locate the owners of any abandoned property. Where there is a substantial amount of money involved, the clerk could file a written petition with the court stating that the owner of the property cannot be located and recommending that an attorney *ad litem* or a guardian *ad litem* be appointed to locate the owner. The court has the authority to pay a reasonable fee for such services.[29]

All property held for the owner by any court, including a federal court, public corporation, public authority or agency, public officer, or a political subdivision, including, but not limited to, the state of Tennessee or any of its departments or agencies, that has remained unclaimed by the owner for more than one (1) year is presumed abandoned, except property in the custody or control of any state or federal court in any pending action. Notwithstanding the provisions of this

section, all property held for the owner by any institution or entity governed by the board of trustees of the University of Tennessee or the state board of regents shall be presumed abandoned within the abandonment periods applicable to private universities and colleges. Property described above, without regard to any activity or inactivity within the past one (1) year, shall also be presumed abandoned if the owner thereof is known to the holder to have died and left no one to take the property by will and no one to take the property by intestate succession (T.C.A. § 66-29-110).

Clerks holding funds or other property, tangible or intangible, presumed abandoned under the provisions cited above must file a verified report with the state treasurer containing the following information:[30]

1. Except with respect to traveler's checks and money orders, the name, if known, and last address, if any, of each person appearing from the records of the clerk to be the owner of any property of the value of $50 or more presumed abandoned;

2. In case of unclaimed funds of a life insurance corporation, the full name of the insured or annuitant and that person's last known address according to the life insurance corporation's records;

3. The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $50 each may be reported in aggregate;

4. Except for property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

5. Other information which the treasurer prescribes by rule as necessary for the administration of these provisions (T.C.A. § 66-29-113).

If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has had a change of name while holding the property, that person shall file with the report all prior known names and addresses of each holder of the property. The report shall be filed before May 1 of each year, reporting property held as of the previous December 31. The treasurer may postpone the reporting date upon written request by any person required to file a report (T.C.A. § 66-29-113).

All unclaimed funds and intangible property presumed abandoned must be delivered with the report to the treasurer with the exception of unclaimed checks held by the state which were derived from 100% federal funding if such delivery would make the state ineligible for future federal funding. Tangible property must

be held for 120 days awaiting further instructions from the treasurer, or, absent those, delivered to the treasurer at the end of that time (T.C.A. § 66-29-115). Any person delivering property to the treasurer is relieved of liability in respect to that property. If someone submits a claim to the clerk for property already delivered to the treasurer, then the clerk may pay the claim and the treasurer will reimburse the clerk (T.C.A. § 66-29-116).

Not more than 120 days before filing the report, the clerk must use all diligence to find the owner, and must send written notice to the apparent owner at that person's last known address. The clerk must also maintain a record of the last known address for 10 years (T.C.A. § 66-29-113). After the reports are submitted, the treasurer is required to publish a list of the names and last known addresses of the apparent owners. Publication should be done in a manner designed to inform owners that their property has been reported and where further information may be obtained (T.C.A. § 66-29-114(a)).

If a county's yearly total for abandoned property exceeds $100, the funds may be returned to the county. At the request of the local government, all unclaimed funds which have been held by the treasurer for at least eighteen months, less administrative costs, are returned. The funds go into the county general fund, except those necessary to maintain a sufficient amount in the unclaimed property accounts to insure prompt payment of any claims (T.C.A. § 66-29-121(c)).

The abandoned property statutes provide for enforcement of these provisions. First, the treasurer may examine the records of any person who the treasurer believes may have failed to file the required reports (T.C.A. § 66-29-127). Any person who fails to report abandoned property, or to perform other required duties, shall be fined $25 for each day the report is withheld, but not more than $1,000. Furthermore, if a holder fails to deliver property as required to the treasurer, then the treasurer may compel delivery in an appropriate court, and shall assess a civil penalty equal to 25% of the value of the property that should have been delivered (T.C.A. § 66-29-129).[31]

Executions for Levy or Garnishment

All judgments and decrees for money may be enforced by execution. (T.C.A. § 26-1-103) The execution is issued by the clerk to the officer on a form that meets all of the notice requirements set out in the Code. The execution may instruct the officer to satisfy the judgment by garnishment of earnings or by levy on personal or real property belonging to the defendant. Upon requesting the issuance of an execution or garnishment, the judgment creditor, or the judgment creditor's agent or attorney, shall file a statement showing the judgment debtor's last known address, the amount owed on the judgment, and the judgment creditor's address for mailing any notice required under this part. If a clerk issues an execution or a

garnishment without demand, the clerk shall ascertain such information from the court records. The judgment debtor's last known address as furnished by the judgment creditor or as ascertained by the clerk shall be included on the notice required by T.C.A. § 26-2-204 or by T.C.A. § 26-2-216. The execution will include an itemized bill of cost and total amount due.

Executions issue against the goods and chattels, lands and tenements of the defendant. (T.C.A. § 26-1-104).

No alias or pluries execution shall issue until the previous execution is returned or satisfactorily accounted for by affidavit. (T.C.A. § 26-1-108).

If the garnishee is unable to identify the defendant by social security number or other information given, he may return the execution with the statement "Defendant cannot be identified or distinguished from information provided on the execution." Failure to include a social security number or tax identification number shall not invalidate the execution. (T.C.A. § 26-1-110(2)(b)).

The clerks of the several courts MAY issue executions in favor of the successful party on all judgments without any demand of the party. (T.C.A. § 26-1-201) The clerks of the various courts of record may issue writs of execution in any case at any time after 30 days after judgment. (T.C.A. § 26-1-203).

An accelerated execution shall be issued by the clerk if:

a) the plaintiff files an affidavit that the defendant is about to fraudulently dispose of, conceal, or remove his property to the endangering of the plaintiff's debt;
b) by leave of the court upon plaintiff showing sufficient cause by affidavit;
c) in general sessions for good cause shown by affidavit. (T.C.A. § 26-1-206).

In all other cases the clerk shall issue to the plaintiff the plaintiff's agent or attorney on demand an execution on any judgment to which the plaintiff is entitled. Any clerk who fails or refuses to issue execution as prescribed in this section, forfeits $500.00 to be recovered by action, and is liable to the party aggrieved in damages, and commits a Class C misdemeanor, for which, upon conviction, such clerk shall be removed from office. (T.C.A. § 26-1-207).

The clerk shall endorse on the execution when issued, the DATE and AMOUNT of the JUDGMENT and the items of the bill of COSTS, written in words and distinctly stated in figures and the DATE of ISSUANCE. (T.C.A. § 26-1-301) The clerk shall enter on the execution docket (on computer in many counties) the DATE OF ISSUANCE of each execution, to what COUNTY and OFFICER

ISSUED; the RETURN of the officer, with the date of such return; the DATES And AMOUNTS of all moneys RECEIVED or PAID OUT of the office thereon. The entries are to be made as they occur. (T.C.A. § 26-1-302) Any clerk neglecting the provisions of T.C.A. § 26-1-301 or T.C.A. § 26-1-302 is liable to a penalty of $125.00 to be recovered by action half to the informer, half to the state and to damages at the suit of the party aggrieved and is also guilty of a Class C misdemeanor in office, for which on conviction, the clerk shall be removed from office. (T.C.A. § 26-1-303).

The officer to whom an execution is legally issued, shall in like manner, endorse thereon the day on which he received it, any levy, sale or other act done by virtue thereof, with the date and the dates and amounts of any receipts or payment in satisfaction thereof. (T.C.A. § 26-1-304) The officer is subject to the same penalties as the clerk. All executions are returnable within 30 days after the date of their issuance. (T.C.A. § 26-1-401).

Exemption. Each defendant is entitled to file a personal property exemption up to $4,000.00 which may include items of personal property in his possession and money and funds on deposit with a bank or other financial institution up to the exemption amount of $4,000.00. (T.C.A. § 26-2-102) In addition, all necessary wearing apparel, family Bible and school books are absolutely exempt from execution. (T.C.A. § 26-2-103) State pension money and certain retirement plan funds or assets are exempt except under some support or domestic relations orders. (T.C.A. § 26-2-104).

Exemption List. The debtor may exercise his claim for exemptions by filing a list of all the items he wants to claim as exempt along with the value of each item. Such list shall be on oath and filed with the clerk before or after the judgment is final. It is the duty of the clerk to provide notice to the defendants attached to or printed on the warrant, summons, or other leading process concerning his right to file a claim of exemptions. Wording for this notice is found in T.C.A. § 26-2-114. Upon application, the judgment creditor may inquire into the truth and sufficiency of the debtor's claim for exemption of personal property. (T.C.A. § 26-2-115)

All property, debts and effects of the defendant in the possession of the garnishee or under his control, shall be liable to satisfy the plaintiff's judgment. (T.C.A. § 26-2-202) Money in the custody of the law is not garnishable. Money in the hands of the clerk of a court and subject to the orders of the court, is in the custody of the law and not garnishable.

Calculating Amount Subject to Garnishment. "Earnings" means compensation paid or payable for personal services. "Disposable earnings" means that part of the earnings of an individual remaining after the deductions required by

law. "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of any debt. (T.C.A. § 26-2-105)

Instructions for calculation of the amount of disposable earnings to be garnished from a judgment debtor and sent to the court is found in T.C.A. § 26-2-106 and T.C.A. § 26-2-107. Basically, it is that amount OVER the amount that would be earned if the defendant were being paid minimum wage for a 30 hour week OR 25% of his disposable earnings whichever is less. This figure is further reduced by $2.50 per child under age 16 per week, as long as the judgment debtor fulfills the duty to inform the employer of each dependent child claimed.

For child support and spousal support, garnishments up to 50% (at times 60%) can be subject to garnishment, however no other garnishment can be withheld from a defendant if the child support deduction is equal to or exceeds 25% of the defendant's disposable earnings. If however, there is a wage assignment that takes only 10% of the defendant's disposable earnings, then the remaining 15% falling under 25% can be subject to garnishment. Support orders always take precedence over any other state court garnishment. Personal earnings of the debtor shall not be exempt from order for alimony or child support. (T.C.A. § 26-2-108) When a debtor has deserted his family, exempted property shall be exempt in the hands of the spouse or children. (T.C.A. § 26-2-109) Certain insurance benefits are exempt from garnishment. (T.C.A. § 26-2-110) Additionally, tools of the trade value not to exceed $1,900.00, Veterans Administration benefits, pensions that vest as result of disability and liquid assets, stocks or bonds, to the extent the debtor owes pursuant to any final court order or judgment for child support are exempt from garnishment. (T.C.A. § 26-2-111) Tennessee debtors in bankruptcy are limited to the state exemptions. (T.C.A. § 26-2-112)

Garnishment Summons. The officer may summon in writing the garnishee to appear and answer the garnishment. (T.C.A. § 26-2-203) The garnishment summons must include a notice telling the garnishee that although he or she has 10 days or in some circumstances a longer time in which to answer the garnishment, he or she must give a copy of the garnishment to the defendant on the same day it is served or on the next working day. The exact wording for this notice is found in T.C.A. § 26-2-203.

Garnishment Answer. The garnishee may be required to answer the garnishment under oath in person or by filing a written answer. (T.C.A. § 26-2-204). Most execution/garnishment forms will provide a place for the garnishee to make his or her answer on one of the three copies served on the garnishee. This should be filed with the clerk within ten days unless a later date has been set by the clerk or officer.

Conditional Judgment. If the garnishee fails to appear or answer, a conditional judgment may be entered against him for the plaintiff's debt, upon which a notice shall issue to the garnishee to show cause why judgment final should not be rendered against him. On failure of the garnishee to appear and show cause, the conditional judgment shall be made final, and execution awarded for the plaintiff's entire debt and costs. (T.C.A. § 26-2-209).

The garnishee against whom judgment has been rendered is entitled to a certificate from the clerk stating the date and amount of the garnishment judgment, in whose favor and in what case rendered. (T.C.A. § 26-2-212).

Levy on Land. If an execution is issued by a court that is not a court of record and a levy is made upon land or an interest in land, then said execution and other papers in connection therewith shall be returned to the circuit court of the county for condemnation as in other cases of levy of a court's execution on land. (T.C.A. § 26-2-210).

Slow Pay Motion. After any judgment has been rendered in any court and the time to appeal therefrom has elapsed, without such an appeal having been made, the judge of the court which rendered the judgment may take the following action. The judge may either before or after the issuance and service of garnishment upon written consent of the parties or upon written motion of the judgment debtor, after due notice and after full hearing of such motion, enter an order requiring such judgment debtor to pay to the clerk of the court a certain sum of money weekly, biweekly, or monthly to apply upon such judgment. Such motion shall be supported by an affidavit stating the debtor's inability to pay with funds other than those earned by wages or salary, name and address of employer, amount of earnings and when paid. Notwithstanding these provisions upon written consent of the parties, the hearing of the judgment debtor's motion to pay judgment in installments may be held on the same date that such judgment is entered. The judgment debtor may file only one motion to establish payments for each judgment (T.C.A. § 26-2-216). At the court's discretion, for good cause shown, the stay order may be reinstated as provided in T.C.A. § 26-2-217 by the defendant filing a motion to reinstate the stay order.

Written Agreement. A written agreement for installment payments signed by the parties, their attorneys, or authorized agents acting in their behalf, and filed with the clerk of the court, shall have the same force and effect as an order made by the judge to stay the issuance, execution or return of any writ of garnishment against wages or salary due the judgment debtor during the period that such judgment debtor complies with the agreement. (T.C.A. § 26-2-218) The stay of execution becomes void if the defendant does not comply with the terms of the written agreement. (T.C.A. § 26-2-219).

Service. It is the duty of the sheriff or other officer serving the garnishment summons to obtain a receipt signed by the garnishee or sign a sworn statement that the garnishee refused to sign such receipt, have attached to the garnishment summons a notice to the employer that he is required to withhold the garnishment amount from the employee's wages, that he is required to pay these moneys to the court, and that he is liable for failure to withhold from the garnishee's wages and for failure to pay these moneys to the court. He shall serve three copies of the garnishment summons upon the employer garnishee, all of which shall contain the notice wording found in T.C.A. §26-2-216. This notice says that the garnishment will be in effect for six months and tells the defendant to apply with the clerk for a motion to quash the garnishment or a motion to pay in installments if certain conditions exist. This notice tells the employer and the defendant how the garnishment deduction is to be calculated and the different standard to apply to garnishment on a support order.

Clerk's Records. The clerk shall keep a record of all payments to and disbursements by him or her. The stay of garnishment in effect as a result of the court order shall be null and void if the defendant fails to comply with the order. The defendant may file a motion and affidavit to reinstate the court order. It is the duty of the clerk to notify the garnishee if the garnishment lien is satisfied. The judgment creditor shall notify the court clerk when the judgment has been satisfied (T.C.A. § 26-2-217).

No clerk SHALL ISSUE an execution or garnishment unless it provides the notices required as follows:

T.C.A. § 26-2-404	Notice to Judgment Debtor
T.C.A. § 26-2-203	Notice to Garnishee
T.C.A. § 26-2-216	Notice to Judgment Debtor (And Notice to Garnishee)

Many counties in Tennessee now use a form that consolidates the execution and garnishment form along with these three required notices. This consolidated form also allows designated space for all the endorsements required of the clerk and the officer.

Fees for Court Clerks Generally

A schedule for fees for clerk services are found in T.C.A. § 8-21-401. Please see succeeding code sections for ancillary fee provisions.

Fees for Computer Searches

In addition to fees allowable pursuant to § 10-7-506, in counties having a population of more than 700,000, according to the 1990 federal census or any subsequent federal census, and in counties having a population of not less than 335,000 nor more than 336,000 according to the 1990 federal census or any subsequent federal census, the clerks of the court as listed in § 8-21-401 may charge a fee not to exceed five dollars ($5.00) for computer searches for any public record having a commercial value (T.C.A. § 8-21-408).

Fees for Witnesses

Witnesses in courts of record shall receive compensation of one dollar per day for each day's necessary attendance; when a witness resides at a distance greater than 10 miles from the court, he or she will receive four cents per mile for going to and returning from court, subject to restrictions upon the number of round trips. A witness under subpoena in a civil matter is not entitled to compensation or reimbursement for travel expenses until these costs have been taxed and collected. However, the party causing the subpoena to be issued may advance the attendance fee or expenses to a witness (T.C.A. § 24-4-101).

Witnesses in courts of record attending under subpoena in a civil matter shall receive, upon request to the clerk, $30 per day for attendance. In addition, when the witness resides at a distance greater than 10 miles from court, the witness shall, upon request, also receive reimbursement for travel expenses for each mile traveled when going to and returning from the court at the rate allowable under the State of Tennessee Comprehensive Travel Regulations in effect at that time. All such compensation and reimbursement shall be taxed as cost (T.C.A. § 24-4-101).

A witness in a court of record attending under subpoena in any court of record in any county other than the county in which the witness lives shall be entitled to receive reimbursement for lodging and meals at a rate allowable under the State of Tennessee Comprehensive travel regulations. In addition, the witness shall also receive reimbursement at the rate allowable by the state travel regulations for each mile traveled in going to and returning from court. In addition to the mileage reimbursement, an out-of-county witness is also entitled to a per diem allowance for each day required to travel in going to and returning from a trial. Mileage reimbursement for an out-of-state witness shall be the same as that allowed a state employee using a personal vehicle for the convenience of the state. Such a witness may be reimbursed for the cost of travel by common carrier, in lieu of mileage reimbursement (T.C.A. § 24-4-102).

In general sessions court, witnesses are entitled to $.50 per day; a witness from a county other than the one in which the court is held will receive $.05 per mile (T.C.A. § 24-4-103).

Filing of Documents[32]

The filing of documents for court records is a duty of central importance to the clerk's office. Rule 5.06 of the Tennessee Rules of Civil Procedure defines the process of filing with the court:

> *The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. The clerk shall endorse upon every pleading and other papers filed with him in an action the date and hour of the filing. Recycled paper with the highest feasible percentage postconsumer waste content is recommended and encouraged for all papers filed with the court..*

The Tennessee Code permits courts to accept for filing documents transmitted by facsimile in accordance with Supreme Court rules, but service by facsimile transmission is not permitted.[33]

What documents should be filed by the clerk of court? Should the clerk look at the substance of the document to see that it is properly drawn? What about pro se, handwritten complaints, answers and other pleadings? It seems that the clerks of courts are receiving more and more poorly drawn documents which are sent to the clerk to be filed. For example, what if you receive a handwritten letter from a father in an adoption case in which he claims he did not abandon the child as alleged in the adoption petition and requests that the Court not grant the adoption? What if you receive a handwritten petition for change of name from a resident of a local prison? There seems to be nothing in the Tennessee Code which directly answers these questions; however, the answer is clearly stated in 15A Am. Jur.2d "Clerks of Court" § 23 and 21 C.J.S. § 251:

> *It is the official duty of the clerk of a court to file all papers in a cause presented by the parties, and to endorse the correct date of the filing thereon. It is the duty of the clerk of the court, in the absence of instructions from the court to the contrary, to accept for filing any paper presented to him, provided such paper is not scurrilous or obscene, is properly prepared, and is accompanied by the requisite filing fee. Unless otherwise specifically authorized by statute, the duty of the clerk of court to file papers presented to him is purely ministerial and he may not refuse to perform such duty except upon order of the court. When the statute requires the clerk of court to file all papers delivered to him to be filed, he is not concerned with the merit of the papers nor with their effect and*

> *interpretation. The clerk has no discretion in the matter of filing papers recognized by law as properly belonging in the record of causes. It is not for the clerk to inquire into the purposes or contents of such papers, or into the circumstances giving rise to them or attending their preparation. The power to make any decision as to the propriety of any paper submitted, or as to the right of a person to file such paper, is vested in the court, not the clerk. However, where a statute makes it the duty of the clerk of court to file a particular document, a judge is without authority to interfere with such filing. (15A Am. Jur.2d "Clerks of Court" § 23, Filing of Papers).*
>
> *Clerks of court should file all legal papers tendered and as a rule are not concerned with their merits. (C.J.S. § 21 Filing of Papers 251).*

As has been stated in Corpus Juris Secundum (C.J.S.) and cited with approval, it is the official duty of the clerk of a court to file all the papers in a cause presented by the parties, and to mark them "Filed" with the date of filing. The clerk has nothing to do with the character, purpose, or merits of papers which are tendered. The clerk's duty is merely to file them, and where the duty to file is imposed by statute, the judge has no authority to interfere.

If you receive documents that may have some relevance to a particular case, obviously it would be best to check with your judge or chancellor to see if the court feels they should be marked "Filed." However, if that is not feasible, in any questionable case, if would be best to mark the documents as "Filed."

A recent Attorney General Opinion, No. 98-210, released on October 12, 1998, states that while trial court clerks are not obligated to remain “on call” twenty-four hours a day, a court clerk should accept documents delivered to the clerk after hours. The determination of whether such documents are timely filed is a matter properly left to the discretion of the court. Therefore, should a litigant locate the court clerk at home or at some other non-office locations after business hours in an attempt to file papers with the court, the proper course of action would be for the clerk to accept the papers and defer to the court as to a determination of whether they should be deemed properly filed.

Although the trial court clerk should accept documents delivered after hours, it is the attorney’s burden to take all steps necessary to ensure that a timely filing is made. A court of competent jurisdiction would have to decide as to whether an attorney’s failure to attempt to locate a trial court clerk to file documents after normal business hours constitutes malpractice.

When a trial court clerk sits as a special judge and an attorney files an application for an extension of time based solely on the fact that the attorney failed to track down the clerk after the clerk’s office has closed, a decision as to the denial of the application is fact specific. Tenn. R. Civ. P. 6.02 provides generally for the enlargement of time with the exception of the time period within

which a motion to alter or amend or a motion for a new trial must be filed. Thus the court lacks the authority to enlarge the time for filing these motions.

Computation of Time. In computing any period of time prescribed or allowed by the rules, by order of court, or by any applicable statute, the date of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period as computed is to be included unless it is a Saturday, a Sunday, a legal holiday, or a day when the clerk's office for filing is closed, in which event the period runs until the end of the next day which is not one of these (T.R.C.P. 6.01; T.C.A. § 1-3-102). When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays are excluded in the computation (T.R.C.P. 6.01. Rule 45 of the Rules of Criminal Procedure is similar to that above and defines legal holiday to mean any national holiday or any holiday recognized by the state of Tennessee).

Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served on the party by mail, three days is added to the prescribed period of time (T.R.C.P. 6.05).

Finance and Accounting

For a schedule of fees, please see § 8-21-404, et. seq. and the “Administrative Fee” section herein under “duties”.

The Clerks of the Court maintain many types of cash funds. The funds include taxes, costs, trusts, fines, etc. The clerk is responsible for maintaining the integrity of the records. It is the auditor’s responsibility to determine if this is being done. Therefore, periodic audits as required by statute are performed in the clerks’ offices. Court Clerks should be familiar with the auditing process. Listed herein are matters to enable the Clerk to maximize benefits from an audit.

Preparing for an Audit. The official should be familiar with the chain of command in the audit organization to provide for a better understanding of the audit process. As discussed in the introduction, the county may be audited by an independent Public Accountant or by the Division of County Audit of the State Comptroller’s Office. The chain of command for an independent public accounting firm will vary depending on the firm. For the Division of County Audit, the chain of command includes:

1. Field Auditors

2. Auditor in Charge

3. Area Audit Managers

4. Assistant Director

5. Assistant to the Comptroller

Audit Period and Cash Counts. Routinely, the audit period for Clerks will be July 1 through June 30 each year. However, the audit may be conducted for another period under special circumstances.

In order to make cash counts a more effective audit procedure and to improve the utilization of audit personnel, cash counts may be conducted at any time during the year without prior notice to the official.

Assembling Information Pertaining to Audit Period. Records supporting the financial statements should be identified and, where possible, segregated for the audit period. These include:

1. Cash Journal/Computer Printouts/Receipt and Disbursement Journals

2. Subsidiary Investment Ledger and Other Documentation of Investments

3. Bank Statements, Deposit Tickets and Reconciliations

4. Revenue Reports

5. Receipts Issued

6. Checks Issued

7. Execution Dockets and Docket Trial Balances

8. Personnel and Payroll Records

9. Case Files

10. Copies of Any Private Legislation Affecting Operation of the Clerk's Office

11. Documentation of Any Irregularities Involving Office Personnel

12. Documentation of Any Litigation Involving the Official

13. Copies of Pertinent Court Decrees (Deputies, Special Comm., etc.)

Entrance Conference. The entrance conference between management (Clerk) and the auditor will be held to familiarize the Clerk with the audit goals and objectives. This conference also allows auditors to obtain an understanding of the Clerk's operations and gives the Clerk an opportunity to disclose any irregularities or unusual transactions. Other topics to be discussed at that time include:

1. Specifics of Audit Work to be Performed

2. Official's Cooperation and Availability of Office Staff

3. Adequate Work Space for Auditors

4. Records and Other Materials Necessary for Audit

5. Prior Audit Exceptions and Any Other Known Problems

Letter of Representation. Auditing standards require the auditor to obtain certain written representations from management. A representation letter has several benefits for management (e.g., avoids misunderstandings and provides a checklist for important matters that affect the financial statements). The representation letter should disclose any irregularities of which the Clerk is aware. Representations do not constitute a guarantee but rather that the information given is correct in good faith to the best of management's knowledge and belief.

Audit Exceptions and Official's Response

Exit Conference. Near the end of the audit work, an exit conference will be held between the official and the auditor. At that time a written draft of any audit findings and recommendations (audit exceptions) will be reviewed with the official. After reviewing any exceptions listed on the exit conference document, the official will be asked to sign the document. Signing the exit conference document does not indicate agreement but only that the audit exceptions listed have been reviewed with the official and that the official has been advised that any oral or written responses to the exceptions will be welcomed.

Oral Responses by Official. The Clerk's position as well as the auditor's position

should be thoroughly discussed at the exit conference so that both have a clear understanding of the issues involved. Auditors will take notes of any oral response offered by the official. These oral responses will be considered for impact on the exceptions before the audit report is finalized.

Written Responses by Official. Written responses by the official should be made to the audit manager within the time frame specified during the exit conference.

Written responses should be as direct as possible and indicate if the official agrees or disagrees with the exceptions. If the official concurs with the auditor's findings, the response should include what course of action has or will be taken to correct the finding. If the official disagrees with the finding, specific reasons should be stated for the disagreement. As with oral responses, written responses will be considered before the audit report is finalized. Written responses may also be paraphrased and included in the audit report.

Published Audit Report. The published audit report will include material audit exceptions and will also reflect whether or not exceptions reported in the prior year have been corrected.

The published report will be distributed to various county officials, the local press and the district attorney general.

Available Assistance for Implementing Audit Exceptions. The official should request assistance form the Division of County Audit or other agencies such as the County Technical Assistance Service to help implement audit recommendations if necessary. The clerk should thoroughly review the auditor's findings and recommendations to ensure that the efforts to correct any exception are effective.

Many offices are computerized; therefore, the internal controls regarding information system operations within the office must be reviewed. The Information System (IS) audits in the Division of County Audit are under the supervision of a separate assistant director with five field auditors located across the four geographic areas of the state.

Preparing for an IS Audit

1. The auditee will be contacted when the IS Auditor is to begin the audit.
2. An entrance conference will be held to complete questionnaires regarding various procedures relating to the computer functions of the office.
3. An exit conference will be presented in writing and reviewed with the official.
4. A report will be issued in the form of a cover letter and an attached

report titled “Review of Internal Controls Regarding Information System Operations.” The report will be distributed to the county executive of the auditee and members of the County Commission.

5. A copy of the report will be provided to the financial auditor to review for impact on their audit. Any major IS findings could be included in the Comprehensive Annual Financial Report.

Most Common IS Findings.

1. Duties relating to the automated functions of the office were not properly segregated.

2. Policies, procedures and standards relating to routine computer operations were not documented.

3. A disaster recovery plan was not developed.

4. Software applications did not have sufficient application controls.

5. Inadequate backup procedures.

Grand Jury and Investigative Grand Jury

Grand Jury. Principles governing the composition, powers, and duties of the grand jury are found in the Tennessee Rules of Criminal Procedure [T.R.Crim.P.], Rule 6. The grand jury has inquisitorial powers over all indictable or presentable offenses found to have been committed or to be triable within the county. The grand jurors are entitled to free access, at all proper hours, to all county offices and buildings and to the examination, without charge, of all records and other papers of any of the county officers in any way connected with their duties. The grand jury has the following duties:

1. Inquire into, consider, and act upon all criminal cases submitted to it by the district attorney general;

2. Inquire into any report of a criminal offense brought to its attention by a member of the grand jury;

3. Inquire into the condition and management of prisons and other county buildings and institutions within the county;

4. Inquire into the conditions of the county treasury;

5. Inquire into the correctness and sufficiency of the bonds of county officers;

6. Inquire into any abuse of office by state or local officers; and

7. Report the results of its actions to the court.

The judge of the court authorized by law to charge the grand jury and to receive the report of that body shall, on the first day of each term of court at which a grand jury is required to be impaneled, direct the names of all the qualified jurors in attendance upon the criminal courts of the county to be written on separate slips of paper, placed in a box or other suitable receptacle, and drawn out by the judge in open court. The judge shall also appoint a foreman. The 12 qualified jurors whose names are first drawn shall, with the foreman, be the grand jury for the term and shall attend the court until dismissed by the judge or until the next term (T.R.Crim.P. Rule 6).

The duties of the clerk regarding the grand jury are as follows (T.R.Crim.P. Rule 6(I) and (j)):

1. Notice of grand jury meeting to be posted by court clerk. (T.C.A. § 40-12-105).

   (a) The clerk of the court having trial level criminal jurisdiction in each county of this state shall cause to be published, not less than thirty (30) days nor more than (40) days before the grand jury meets, the following notice in a newspaper of general circulation in his county:

> "It is the duty of your grand jurors to investigate any public offense which they know or have reason to believe has been committed and which is triable or indictable in this county. Any person having knowledge or proof that such an offense has been committed may apply to testify before the grand jury subject to the provisions of Tennessee Code Annotated, §_____. The foreman in this county is presently: (Here list foreman and his address)"
>
> "The grand jury will next meet on _____, the _____ day of _____, 19__, at _____. You may be prosecuted for perjury for any oral or written statement which you make under oath to the grand jury, when you know the statement to be false, and when the statement

touches on a matter material to the point in question."

(b) In addition to his other duties required by this section, the clerk shall post a written notice in the form set forth in subsection (a) in a place convenient to the public at the county courthouse.

(c) Failure by the clerk to perform the duties required by this section is a misdemeanor and grounds for removal from office. (Acts 1978, ch. 727, § 2; 1982, ch. 805, § 1; T.C.A., § 40-1627)

2. The clerk shall furnish the district attorney general, on the first day of the term, with the names of the prosecutor, defendant, and witnesses in each case. Process for witnesses sent for by a grand jury shall be directed to the sheriff or other lawful officer and may also be executed and returned, during the term of appointment, by any officer appointed by the court to wait upon the grand jury.

3. The clerk of the court, on the application of the grand jury, shall issue subpoenas, in such cases, for any witnesses the jury may require to give evidence before them.

4. The district attorney general may call upon the clerks of their various courts of process, between the terms of their respective courts, to secure the attendance of witnesses before the grand juries on the first day of the succeeding term if, in their opinion, it is necessary to secure the ends of justice and protect the interests of the state.

5. Witnesses may be sworn by the clerk, who shall endorse the fact on the subpoena, and sign the clerk's name to the official endorsement.

Investigative Grand Jury. An investigative grand jury may be convened upon petition to a committee comprised of attorney generals whenever a district attorney general, within his or her respective jurisdiction, or the attorney general of Tennessee, has reason to believe that there is criminal activity involving a violation of or a conspiracy to violate these specified criminal provisions (T.C.A. § 40-12-201):

1. T.C.A. § 39-14-903, relating to money laundering;

2. T.C.A. § 39-17-902(b), T.C.A. § 39-17-911 and T.C.A. § 39-17-1005, relating to the distribution of certain materials to minors or the use of minors for obscene purposes;

3. T.C.A. § 39-17-417, relating to controlled substances;

4. T.C.A. § 39-16-401 through § 39-16-405, relating to misconduct involving public officials and employees;

5. T.C.A. § 39-16-101 through § 39-16-108, relating to bribery;

6. T.C.A. § 39-12-204, relating to racketeer influenced and corrupt organizations;

7. T.C.A. § 39-17-501 through § 39-17-507, relating to gambling; or

8. T.C.A. § 39-16-501 through § 39-16-507, relating to interference with government operations.

Upon the receipt of written approval of the committee, the district attorney may file a written petition with the clerk of the circuit court, or criminal court in counties where such court has been established, for the county wherein the criminal activity allegedly occurred to convene an investigative grand jury to consider the matters set forth in the petition. The petition shall be made upon oath or affirmation and shall contain the following:

1. An allegation that one or more of the offenses described above have occurred,

2. The basis of the district attorney's knowledge of the commission of the offenses, and

3. Sufficient facts to establish probable cause to believe the crimes specified in the petition have been committed.

The petition shall also have appended to it the written consent of the committee which approved the filing of the petition (T.C.A. § 40-12-203).

Upon the filing of a petition to convene an investigative grand jury, the clerk shall mark the petition as filed, note the date and time of filing thereon, and shall record the filing of it in records kept for these proceedings. The clerk shall then immediately forward the petition to the presiding judge of the judicial district (T.C.A. § 40-12-204).

Upon receipt of a petition to convene an investigative grand jury, the presiding judge shall consider the petition *in camera*. The judge shall grant the petition upon the following findings:

1. The crimes alleged to have taken place are among those set forth above, and

2. There is probable cause to believe the criminal activity set forth in the petition has taken place.

The judge shall enter an order in writing respecting whether an investigative grand jury shall be convened. The order will be filed by the clerk of the court and entered in records described above. The clerk shall forward a copy to the district attorney (T.C.A. § 40-12-205).

Grand jury proceedings and documents are confidential. No person who by virtue of an official position has knowledge of the filing of an application for consent, the action of the committee on the application, the filing of a petition to convene an investigative grand jury, or any action thereon shall disclose such knowledge except as specifically allowed by statute (T.C.A. § 40-12-209).

When a grand jury convened pursuant to these statutes has completed its investigation, the district attorney shall promptly file a notice of dissolution with the clerk of the court wherein the petition seeking its empaneling was filed. Upon the filing of such notice the functions of the grand jury shall cease and it shall be considered dissolved (T.C.A. § 40-12-217).

Investments

Duty to Invest. When money has been tendered into the clerk's office, usually the clerk has no duty to invest the funds unless instructed to do so by: (a) Rules of Court; (b) a court order, or (c) in some cases, by instructions from the attorneys involved. If the amount tendered into court is a substantial sum and there is no court order or other instructions, it is the best practice for the clerk to contact the attorneys to see if they want the funds to be invested. The attorney may have over-looked it or assumed that it would be invested. Once the clerk has been instructed to invest, the interest earned will accrue to the benefit of the litigants less the clerk's commission on interest earned, see T.C.A. §18-5-106.

The writer believes the better practice is to require specific instructions as to where the funds are to be invested. This could be important in the event of a bank failure and to prevent one financial institution from feeling it is being slighted as a result of more funds being placed somewhere else.

There is a separate statute dealing with investing funds of minors and incompetents which should be reviewed.

> T.C.A. §18-5-105. "Clerks and masters of chancery courts, having in their hands funds belonging to minors or incompetents who have no regular guardian or other custodian or other person authorized by law to demand the same, may

> invest the same as provided in T.C.A. §18-5-106 without prior specific order of the court if, in their best judgment, it appears that such funds will be idle and payment of same will not be demanded for a period of thirty (30) days from and after receipt of same."

This statute addresses only clerks and masters; however, it probably applies to all clerks. The statute is written leaving it up to the best judgment of the clerk as to whether or not to invest the funds; however, a clerk's failure to invest funds of minors or incompetents (where funds are to be held for more than 30 days) might subject the clerk to criticism.

Maximum Amount Invested in Federally Insured Institutions. Bank deposits are federally insured up to $100,000 for each separate investment. Thus the clerk should not deposit more than $100,000 in a bank unless specific contrary instructions are given by court order, or unless a collateralization agreement is reached whereby the financial institution agrees to put up collateral such as U.S. government bonds for any amounts over $100,000. See T.C.A. §18-5-106.

Funds Invested. Generally funds can be invested in any federally insured financial institution or in the Tennessee Local Government Investment Pool. However, if court order directs funds to be invested elsewhere, the clerk shall follow the terms of the court order.

T.C.A. §18-5-106 deals with authorized investments.

> "(a) The clerks and masters of the chancery courts, the clerks of the probate, criminal, circuit, general sessions, law and equity and special courts have the authority to invest idle funds held under their control, not otherwise invested. Such investments shall be in banks or savings and loan associations operating under the laws of the State of Tennessee or under the laws of the United States; provided, that such deposits are insured under the federal deposit insurance corporation or the federal savings and loan insurance corporation. Such investments shall not exceed the amounts that are federally insured unless otherwise fully collateralized under a written collateral agreement. The interest on such investments shall become part of the fees of the court clerk and the clerk shall be required to account for interest received the same as with other fees received.

(b) Nothing in this section shall be construed to relieve the clerks of courts from the responsibility of investing funds held under their control pursuant to court order or under the rules of court. The interest on those investments shall accrue to the benefit of those directed by the court or by agreement of the parties to the litigation.

(c) For investing funds as provided in subsection (b) and under Statute 18-5-105, the clerk shall receive a fee of five percent (5%) of the earnings of such investment.

(d) Any funds authorized to be invested by subsections (a) , (b), and (c) may be invested by the clerk in the local government investment pool administered by the state treasurer."

If a clerk is interested in investing funds in the Local Government Investment Pool, the following information may be of interest.

Tennessee's Local Government Investment Pool (LGIP) was established in 1980 to allow local government officials the opportunity to invest idle cash in safe investments and earn a higher rate of return. As of Fall 2000, the fund manages around $2 billion in local government funds.

For court clerks, the LGIP can be used in any of several ways:

1. **To establish trust funds.** Chancery, juvenile, and circuit courts often use the LGIP to deposit funds in trust for a minor.
2. **Operating accounts.** Many court systems use the LGIP to earn a higher rate of return on any funds that would normally be held in a checking account.
3. **Miscellaneous accounts.** Because the fund allows multiple accounts under your single entity (up to ninety-nine), accounts for office supplies, payroll, maintenance, or any other expense may be managed separately. Individualized, detailed reports are provided.

The LGIP presents a great tool for the investing strategies of Tennessee’s local government entities. Many governments in the state have chosen to round our their investment arsenals with LGIP accounts. The LGIP offers a competitive rate with

> competitive service and multiple other benefits such as several levels of checks and balances to every transaction.
>
> We provide a method for agencies to invest funds with same or next-day access at a healthier rate of return than the entity might receive elsewhere. Many local governments who explore the LGIP option find better liquidity, easier separation of funds, and superior returns.
>
> Please contact the LGIP office at (615) 532-1163 for information. The LGIP office is located on the eleventh floor of the Andrew Jackson Building, Nashville, Tennessee, 37219. Our mailing address is P.O. Box 198785, Nashville, TN, 37219-8785. Useful information is also available via the internet at www.treasury.state.tn.us/lgip.

Idle Funds. What can the clerk do with the idle funds where there is no court order or other instructions to invest? T.C.A. §18-5-106 states that the clerk can invest idle funds and the interest will become part of the clerk's fees. It should be noted, however, that a number of lawsuits have been filed challenging the legality and constitutionality of this statute.[34] Further, the clerk must note that funds paid into court by defendants as security for judgments pending appeal are not idle funds.

Failure to Invest Funds. If a clerk fails to invest funds after being properly instructed to do so, the clerk's office could be subject to liability. This generally arises when the clerk does not realize the instructions have been given to invest the funds.

A potential problem arises where a court order is entered directing the clerk to invest at a separate time from when the money is paid in. In those instances, the employees of the clerk's office may not realize that the funds are to be invested and therefore, the court order may not be complied with.

In Shelby County Chancery Court there is a court rule which hopefully will prevent this from becoming a problem. The rule is quoted below:

> "The Clerk and Master's Office shall invest litigant's funds paid into court only if there is a court order directing them to do so. The order should state the name of the financial institution in which the funds are to be invested and type of investment desired. <u>At the time of payment or when the order is entered, if later, it shall be the DUTY OF THE</u>

ATTORNEY seeking investment of funds to specifically notify the clerk receiving payment that the funds are to be invested."

IRS Form 1099INT. It is wise to get information necessary to complete a 1099INT form at the time the money is paid into court. This information should include the name and address of the person or entity to whom the interest should be chargeable for income tax purposes, and the social security number or tax ID number. In some instances, the account may be set up under the social security number of the ultimate beneficiary of the interest and in those instances, the financial institution will send the 1099INT information direct to that individual and IRS.

Judicial Sales and Delinquent Tax Sales

Judicial Sales. Conducting judicial sales is generally a regular part of a clerk and master's duties, and the clerks of the several courts are vested with the powers of clerks and masters in all equity causes in their courts (T.C.A. § 18-1-109).[35] The clerk has the responsibility to see that the sale of property is properly advertised and otherwise handled according to law.[36]

In any sale of land to foreclose a deed of trust, mortgage or other lien securing the payment of money or other thing of value or under judicial orders or process, advertisement of such sale shall be made at least three different times in some newspaper published in the county where the sale is to be made.[37] The first publication shall be at least twenty days before the sale (T.C.A. § 35-5-101). Where a publication of a legal notice is allowed or required by law, a newspaper publishing such notice shall charge and receive not more than its regular classified advertising rate (T.C.A. § 8-21-1301).

If advertisement cannot be made in a newspaper, the sale shall be published for thirty days by written notice posted in at least five of the most public places in the county, including the courthouse and in the neighborhood of the defendant or the civil district where the land lies (T.C.A. § 35-5-103). The newspaper advertisement or the written notice shall give the names of the plaintiff and defendant, or parties interested, a brief description of the land (including street address, if available), the time and place of the sale, and certain information regarding federal and state liens against the property (T.C.A. § 35-5-104). A clerk failing to comply with these provisions is guilty of a misdemeanor and liable to the party injured for all damages resulting from the failure (T.C.A. § 35-5-107). A sale held without the required notice is neither void or voidable (T.C.A. § 35-5-106).

At any time before 10:00 a.m. on the day of the sale, the defendant or other person whose property is to be sold may deliver to the officer or person making the sale a plan of division of the lands to be sold, signed and bearing the date subsequent to the date of advertisement; in this case so much of the land as may be necessary to satisfy the debt and costs, and no more, shall be sold according to the plan furnished. If no such plan is furnished, the land may be sold without division (T.C.A. § 35-5-108). The sale in all these cases shall be made between the hours of 10:00 a.m. and 4:00 p.m. of the day fixed in the notice or advertisement (T.C.A. § 35-5-109). In a sale of land to foreclose a deed of trust, mortgage, or other lien, the trustee or similar officer may attend, receive bids, conduct the sale, and execute any applicable trustee's deed or similar conveyance instrument (T.C.A. § 35-5-114).

In all sales of land made under orders and decrees of the circuit, probate, chancery, appellate, and supreme courts, where an advance bid of as much as ten percent (10%) of the original bid is made, the clerk or clerk and master of the court has the power to accept advance bids, reopen the bidding on the sale, and receive additional bids. The clerk may hold the sale open for advanced bids for such time as the clerk may designate, and give the purchaser and parties, or their attorneys of record, notice that the bidding is reopened. The clerk is to report this action to the court for confirmation. These provisions are not to be construed as abridging the rights and jurisdiction of the chancellor to reopen the bidding on such terms as the chancellor may deem right (T.C.A. § 35-5-110).

Whenever the state is interested in the proceeds of any execution sale or any judicial sale, to any extent whatsoever, the state, acting through its attorney general and reporter, may bid on and buy in property either real or personal, at such sale, to the same extent as any natural person might do. Any sums due and payable on behalf of the state, as costs of sale or as a part of the purchase price of the property so bid in and paid by the state shall be paid out of the general fund of the treasury of the state upon the warrant of the governor (T.C.A. § 35-5-111).

Whenever real or personal property is to be sold at public sale under court order, the court, judge, or chancellor under whose jurisdictions such sale is to be made has the discretionary authority to secure the services of an auctioneer licensed in this state to conduct the public sale and to fix the auctioneer's fee, such fee to be not more than 6% of the sale price on sales of real property and not more than 10% of the sale price on sales of personal property. These fees do not include the expenses of sales. Such fee upon order is to paid out of the proceeds of the sale. Whenever real property is sold at such public sale conducted by an auctioneer, the sale shall be conducted on the real property to be sold. If the clerk of the court or clerk and master is also a licensed auctioneer, then such clerk or clerk and master shall receive fees as

clerk, clerk and master, or special commissioner, and shall not receive any extra fee as a licensed auctioneer (T.C.A. § 35-5-112).

These provisions and procedures apply to all auction sales of property ordered by a court in the distribution of marital property in divorce cases (T.C.A. § 36-4-121). However, the court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to insure that such property is sold for its fair market value (T.C.A. § 35-5-113).

Delinquent Tax Suits[38]. After February 1 and no later than April 1, the delinquent tax attorney must file suit in chancery or circuit court to collect delinquent property taxes due the state, county, or municipality, as well as penalties, interest, and costs. The complaint should include not less than twenty-five defendants, if there are twenty-five delinquent taxpayers in the county. This suit can also be filed against <u>all</u> the delinquent taxpayers in the county. This type of action is given priority by the court. Additional defendants may be added to the suit as a matter of right upon filing notice to add defendants; notice must comply with the Tennessee Rules of Civil Procedure Section 67-5-2415 and Tennessee Code Annotated, Section 67-5-2405. All suits, whether brought in circuit or chancery court, should be prosecuted according to the rules of the chancery court (T.C.A. § 67-5-2414). Upon the filing of this suit, the trustee must submit to the county legislative body a list of uncollected delinquent taxes, and must thereafter receive credit for any taxes for which a lawsuit has been filed (T.C.A. § 67-5-2407). After suit is filed, a defendant may have the case dismissed as to his or her property by paying into court the amount of taxes due plus interest, penalty, and court costs (T.C.A. § 67-5-2411). Clerks are not required to prepare petitions, complaints, summons, notices, or orders for the prosecution of tax enforcement suits (T.C.A. § 67-5-2410(e)).

There is no authority for a chancery court to delay collection proceedings against owners of large tracts of real estate even though it may appear to be in the best interest of the county to allow the delinquent taxpayers additional time to pay their taxes. Likewise, the court has no authority to order taxes, interest, penalties, and other charges to be paid on an installment basis.[39] Tax suit complaints, once filed, may be amended to cure descriptions, add parties, and join new owners (T.R.C.P. Rules 15, 19, 20). The court retains jurisdiction to collect delinquent taxes even though the assessment may be illegal and improper procedures may be followed.[40]

> *<u>Fees and Additional Expenses of the Sale</u>*. Upon the filing of the tax suit to enforce the tax lien against real or personal property, a 10% penalty is added to the base amount of the delinquent tax, not including accrued interest and penalties, which may be used to

compensate the delinquent tax attorney and cover expenses. No litigation tax is imposed in delinquent tax suits. The court-ordered clerk's fees for basic services, plus regular clerk's fees are allowed, as are the regular sheriff's fees, with a $7.50 sheriff's fee specified for service of process on each defendant when the sheriff serves the summons.

Additional expenses ordered by the court, including but not limited to title examination fees, extra publication, survey fees, environmental assessments or other necessary costs are considered as part of the court costs for purposes of the tax suit. If necessary for the prompt dispatch of suits for the collection of delinquent taxes, the court may order all reasonable expenses of prosecuting such suits to be paid out of delinquent tax money on hand, in addition to that otherwise provided (T.C.A. § 67-5-2410).[41]

Receivership. In all cases, the court in which the delinquent tax suit is filed may appoint receivers to take charge of the property and collect the rents and profits. After the receiver is compensated, the funds are to be applied to the taxes, costs, penalties, and interest (T.C.A. § 67-5-2417). For delinquent taxes which have been due and payable for at least two years, any governmental body having an interest in the tax lien has the right to petition the court in which the delinquent tax suits are filed to appoint receivers to collect rents on the property subject to the lien. The right to appoint a receiver exists whether or not the property is being misused, wasted, or neglected, and whether or not the security for the tax is adequate (T.C.A. § 67-5-2202). A residence is not subject to a receivership (T.C.A. § 67-5-2203).

After the receiver is compensated, the assets of the receivership are to be distributed for court costs, necessary or desirable expenses for maintenance of the receivership, and taxes due parties to the tax suit. Any remaining amount should be paid to the owner of the receivership property (T.C.A. § 67-5-2206; T.C.A. § 67-5-2209).

Notice. Each defendant named in the tax suit must be served by any manner authorized in the Tennessee Rules of Civil Procedure, including constructive service of process (publication) (T.C.A. § 67-5-2502; T.R.C.P. Rule 4). A state must provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[42] In the event of a tax sale, the property must be advertised in one sale notice which names the owners and describes the property. The advertisement may be by publication in a newspaper, or by printed handbills. Notice of the sale must be sent by

certified return receipt mail to the last known address of the present owner of any real property if the delinquent taxes for which the sale is to be conducted were assessed on the real property when owned by a prior owner (T.C.A. § 67-5-2502). Where a taxpayer is improperly before the court either by lack of notice or inadequate description of the property, the tax deed is void.[43]

The clerk may serve on each particular defendant a notice and summons that contains information specific to that defendant's property rather than serving each defendant with a copy of the complaint and exhibit. The notice must (1) identify the suit sufficiently to enable the taxpayer to know the delinquent taxes upon which he or she is being sued, and (2) identify what property is subject to the lien. Where suits have been consolidated pursuant to T.C.A. § 67-5-2409, one notice can be used for more than one suit, or for the consolidated suits.

Service of process may be made by sending the summons and the notice as provided by law. Evidence of personal notice consists of the return receipt signed by the defendant, spouse, or other person deemed appropriate to receive summons or notice (as provided in the Tennessee Rules of Civil Procedure), or of the return receipt which is marked "refused." If the return receipt does not establish that the defendant or the authorized agent signed the receipt or that the notice was "refused," the court may find that the defendant has received actual notice by independent proof, or the court may order additional steps to be taken to give the defendant notice (T.C.A. § 67-5-2502). If the defendant does not respond within the time required, after being properly served, a default judgment motion may be filed.

Advertisement of the Sale. The advertisement of the tax sale is an important duty that the clerk performs. The property must be advertised in one sale notice in the newspaper (or by printed handbills as the court orders), setting out the names of the owners of the different tracts or parcels of land, describing the property, and specifying the amount of the judgment against each taxpayer. The description of the property must reference a deed book and page (where a complete legal description can be found) and may include a description (street address, map and parcel number, number of acres) of the property as it is commonly known. A mistake in the common description will not invalidate the sale if the deed book and page reference is accurate (T.C.A. § 67-5-2502).

As discussed above, notice of the sale must be sent by certified return receipt mail to the last known address of the present owner (as

reflected in the assessor's records) if the delinquent taxes were assessed to a prior owner, and to any person who has filed a notice of a nonpossessory interest with the assessor. In the event of the sale of severed mineral interest property, the court clerk must send a notice of proceedings regarding the sale by certified return receipt mail to any owner of the surface interest who has filed a declaration of surface ownership. If the certified mailing is not claimed after twenty days, the sale may proceed. This certified mailing is part of the cost of the tax suit (T.C.A. § 67-5-2502).

The Sale. The sale must be conducted at the place and time given in the notice and should be public and open to all. Generally, a valid sale is not held on a Sunday or a non-judicial day. However, the mere designation of a day as a holiday does not invalidate a sale held on that day.[44] The court shall order the sale of the property for cash, subject to the equity of redemption, which gives the taxpayer the right to pay the taxes, interest, penalties and costs, and terminate the sale proceeding (T.C.A. § 67-5-2501). Property interests which are less than an entire fee and are separately assessed may be sold without selling the entire fee; examples of separate interests include leaseholds and tenancies in common. A remainder interest constitutes part of the total present ownership of the land and cannot be separately assessed.[45]

Generally, any person not disqualified by statute may purchase at a tax sale. However, persons under a moral or legal obligation to pay taxes on land cannot become a valid purchaser at a tax sale, and if such a person does purchase it, it is deemed a redemption or payment of the tax which does not establish a new title. In addition, persons occupying positions of trust ("fiduciaries") with the taxpayer cannot acquire title at a tax sale. For example, an agent of a deceased taxpayer who had control of the property and sufficient funds to pay accrued taxes cannot purchase such property at a tax sale and claim title in the agent's name. A member of a taxpayer's family is not precluded from purchasing the property at a tax sale as long as no fiduciary relationship or fraud is involved. However, a husband or wife is usually precluded from purchasing the other's property at a tax sale.[46]

The clerk should bid in the amount due for taxes, penalties, interest, and costs at the sale if no other bidder offers the same or a greater bid. Up to 10% of the tax proceeds may be applied first to the compensation for prosecuting suits, then the proceeds of the sale are applied to the costs of the suit, and the remainder goes to the state first, county second, and municipality third, as determined by the court

(T.C.A. § 67-5-2501). Similarly, in the event the land is sold for county taxes only, the sale proceeds are applied to any unpaid balance of compensation due the delinquent tax attorney, costs of the suit, county, and municipality (T.C.A. § 67-5-2506).

Money paid into court as a result of these proceedings is received by the clerk and paid out by the clerk in the same manner as other public revenue; the clerk receives the same compensation. When requested by the county executive or county trustee, the clerk must make settlement and pay over the funds (T.C.A. § 67-5-2421).

If the county purchases land at a tax sale, the county executive is in charge of the land. During the statutory redemption period, the county executive should preserve the land from waste. At the end of this time, the county executive should arrange to sell the land expeditiously and beneficially. A committee of four members must be elected by the county legislative body, from the county legislative body, who, together with the county executive, place a fair sales price on each tract of land. The committee may authorize the sale of any tract of land upon terms that will secure the highest and best sale price, but the credit extended must not exceed three years, and a lien must be retained to secure the purchase price. No tract of land should be sold for less than the total amount of the taxes, penalty, cost and interest; however, if it appears to be impossible to sell the land for this amount, the county legislative body in session may grant permission, upon application, to offer the land for sale at some lower amount fixed by the county legislative body (T.C.A. § 67-5-2507).

Whenever the sale of land is arranged by the county executive, the deed must not be executed or become final until 10 days after notice of a sale, the name of the purchaser and the terms, conditions and price are published in a newspaper in the county. If anyone increases the offer within the ten days by 10% or more, the party making the first offer must be notified and a day must be fixed when both parties shall appear and make offers. The tract of land must be sold to the highest and best offer (T.C.A. § 67-5-2507).

Conveyances of land are made without warranties of any sort, and deeds must be executed by the county executive or other chief fiscal officer of the county and the county trustee, who collects the purchase price at the time of execution of the deed and applies the proceeds accordingly. The deed is prepared by the delinquent tax attorney as a part of the duties for which he or she is compensated under the provisions of T.C.A. § 67-5-2410; no additional compensation is allowed (T.C.A. § 67-5-2507). If the land cannot be sold at the end of

the statutory redemption period, property held by a county is exempt from taxation, regardless of use, as long as the property is held for the purpose of realizing the full amount of taxes, penalties, costs, and interest (T.C.A. § 67-5-2509).

Confirmation of Sale. Courts having jurisdiction of any delinquent tax proceeding are vested with the authority to render judgments and decrees and order writs of possession to enforce tax liens (T.C.A. § 67-5-2419). Typically, after the property is sold, the clerk reports to the court on the sale, and the court issues a decree confirming the sale. The decree concludes the tax sale, and usually contains a description of the property and complies with all legal requirements to properly pass title. Once completed, the buyer is entitled to possession with all its rights and liabilities.

If the tax deed is issued before the redemption period expires, the deed should state that it is subject to statutory redemption.

Report Under Reference. A reference may be taken for each parcel of property to ascertain all delinquent revenues, including costs, fees, penalties and interest; notice of this amount is given to all officers whose duty it is to collect delinquent revenue (T.C.A. § 67-5-2416). The report may be made before the sale, and even after confirmation of the sale, but must be made before distribution of the sale proceeds.[47] Reports under reference in delinquent tax sales are made pursuant to Tennessee Rules of Civil Procedure, Rule 53, on an Order of Reference by the court.

Redemption. Clerks who process the sale of delinquent tax property should be familiar with the right of redemption. Tennessee Code Annotated § 67-5-2701 et. seq. provides a delinquent taxpayer a period of one (1) year in which to redeem his or her property. This right must be exercised in accordance with the statute.

Jury Orientation

In some jurisdictions, the judge presiding over a jury trial will give the jury a brief orientation about the use of juries in the county. These comments are designed to help jurors understand the importance of their role and to encourage a serious approach to their work. In other jurisdictions, the clerk is expected to meet with jurors and give them a practical orientation, which will include those sorts of comments.

A clerk should seek guidance from the judge about what information should be conveyed to jurors and who should deliver the information. There are many sources for recommended text on this subject.

Making a Record on Appeal

General Provisions. An appeal as of right is one which does not require permission of the trial or appellate courts as a prerequisite to taking an appeal. It is initiated by timely filing a notice of appeal with the clerk of the trial court as provided in Rule 4 of the Tennessee Rules of Appellate Procedure (hereinafter referred to as T.R.A.P.) and by service of the notice of appeal as provided in Rule 5 of T.R.A.P. An appeal as of right includes the following cases:

1. Every final judgment (includes a decree) entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals. However, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

2. Only final judgments in Worker's Compensation cases are appealable as of right directly to the Supreme Court.

3. Any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or the Court of Criminal Appeals:

    a. on a plea of not guilty,
    b. on a plea of guilty or nolo contendere **if** the defendant entered into a plea agreement but explicitly reserved (with the consent of the state and the trial court) the right to appeal a certified question of law dispositive of the action, **or** if a defendant seeks review of the sentence and there was no plea agreement concerning sentence, **or** if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceeding already had,
    c. on an order denying or revoking probation,
    d. on a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding.

4. In a criminal case, the State may appeal as of right, to the Court of Criminal Appeals, an order or judgment entered by a trial court:

a. the substantive effect of which results in dismissing an indictment, information, or complaint,
b. setting aside a verdict of guilty and entering a judgment of acquittal,
c. arresting judgment,
d. granting or refusing to revoke probation,
e. remanding a child to the juvenile court,
f. a final judgment in a habeas corpus, extradition, or post-conviction proceeding.

An appeal as of right is taken without moving in arrest of judgment, praying for an appeal, entry of an order permitting an appeal or compliance with any other similar procedure (appeals by permission require express authorization by the trial court or court of appeals). Provided, however, that in all cases tried by a jury, no issue presented for review shall be predicated on error in the admission or exclusion of evidence, jury instructions granted or refused, misconduct of jurors, parties or counsel, or other action committed or occurring during the trial of the case, or other ground on which a new trial is sought, unless the same was specifically stated in a motion for a new trial; otherwise such issues will be treated as waived. The failure of an appellant to take any step other than the timely filing and service of a notice of appeal does not affect the validity of the appeal but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal (T.R.A.P. Rule 3).

The notice of appeal required by Rule 3 of T.R.A.P. shall be filed with and received by the clerk of the trial court within thirty days after the date of entry of the judgment appealed from. Any party may serve notice of entry of an appealable judgment in the manner provided in Rule 20 of T.R.A.P. for the service of papers (T.R.A.P. 4). The notice of appeal shall specify the party or parties taking the appeal, designate the judgment from which relief is sought, and name the court to which the appeal is taken. An appeal shall not be dismissed for informality of form or title of the notice of appeal (T.R.A.P. 3). However, case law construing Rule 3 of the Federal Rules of Civil Procedure holds that a notice of appeal with a caption identifying an employee group "et al." as plaintiffs, and stating that "plaintiffs" are appealing certain orders, but failing to name individual plaintiffs named in the complaint, is insufficient to confer jurisdiction over appeals of individual plaintiffs. The notice must include the name of each party taking an appeal.[48]

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Interlocutory appeals include T.R.A.P. Rule 7,8,9 and 10. Rule 7 allows for a party to file a motion requesting the review of an order staying the execution of a judgment either pending appeal or pending the thirty (30) day waiting period from the time of entry of the judgment as per Tennessee Rules of Civil Procedures, Rule 62. Rule 8 allows the Court of Criminal

appeals to review the findings of the trial court in regard to the bond set for a dependant. A Rule 8 application may request a reduction in the bond previously set by the trial court, or that a bond amount be set which was denied in the trial court. The appellate court may authorize the preparation of the transcript, in a Rule 7 or 8, pertaining to the relief sought. T.R.A.P. Rule 9 requires an opinion from the trial court, when an order is not appealable as of right but is appealable, asking the appellate court to review the case. The trial judge has the burden of ascertaining the criteria and validity of the following reasons: 1) the need to prevent irreparable injury and that the probability that review upon entry of the final judgment will be ineffective; 2) the need to prevent needless, expensive and protracted litigation; and 3) the need to develop a uniform body of law. Within thirty (30) days of entry of the order in question, a party must file a motion, in the trial court, requesting relief. A party has ten (10) days from the filed trial court opinion in a Rule 9 to apply to the appellate court for permission to appeal. Should the appellate court grant a Rule 9, the trial court prepares the record in normal fashion. If a party involved in a suit on the trial level feels that the lower court deviated for the "accepted and usual course of judicial proceedings" that party files a Rule 10 directly to the appellate court.

In a civil action, if a timely motion under the Tennessee Rules of Civil Procedure is filed in the trial court by any party:

1. Under Rule 50.02 for judgment in accordance with a motion for directed verdict;

2. Under Rule 52.02 to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;

3. Under Rule 59.02 for a new trial;

4. Under Rule 59.04 to alter or amend the judgment;

then the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion (T.R.A.P. Rule 4).

In a criminal action, if a timely filed motion or petition under the Tennessee Rules of Criminal Procedure is filed in the trial court by the defendant:

1. Under Rule 29(c) for a judgment of acquittal;

2. Under Rule 33(a) for a new trial;

3. Under Rule 34 for arrest of judgment;

4. Under Rule 32(f)(1) for a suspended sentence;

then the time for appeal for all parties shall run from entry of the order denying a new trial or granting or denying any other such motion or petition. A

prematurely filed notice of appeal shall be treated as filed after the entry of the judgment from which the appeal is taken and on the day thereof (T.R.A.P. Rule 4).

Not later than seven days after filing the notice of appeal, the appellant in the action shall serve a copy of the notice of appeal on counsel of record of each party or, if a party is not represented by counsel, on the party as well as the clerk of the appellant court for the respective division. Proof of service in the manner provided in Rule 20(e) of T.R.A.P. shall be filed with the clerk of the trial court within seven days after service. The appellant shall note on each copy served the date on which the notice of appeal was filed. Service shall be sufficient notwithstanding the death of a party or counsel (T.R.A.P. Rule 5(a)). The trial court clerk shall promptly serve all filed notices of appeal on the clerk of the appellate court designated in the notice of appeal.

In criminal actions, when the defendant is the appellant and the action was prosecuted by the state, the defendant shall serve a copy of the notice of appeal on the district attorney general of the county in which the judgment was entered and on the Attorney General at the Nashville office. When the defendant is the appellant and the action was prosecuted by a governmental entity other than the state for a violation of an ordinance, the copy of the notice of appeal shall be served on the chief legal officer of the entity or, if that officer's name and address do not appear as of record, then on the chief administrative officer of the entity at the official address. When the state or other prosecuting entity is the appellant, a copy of the notice of appeal shall be served on the defendant and counsel. Service shall be made not later than seven days after filing notice of appeal with a copy going to the appellant court clerk of the respective division, and proof of service shall be filed with the clerk of the trial court within seven days after service. The appellant shall note on each copy served the date on which the notice of appeal was filed. The trial court clerk shall promptly serve all filed notices of appeal on the clerk of the appellate court designated in the notice of appeal.

The clerk of the appellate court shall enter the appeal on the docket immediately upon receipt of the record on appeal and shall immediately serve notice on all parties of the receipt of the record and docketing of the appeal. An appeal shall be docketed under the title given to the action in the trial court with the appellant identified as such, but if such title does not contain the name of the appellant, the party’s name, identified as the appellant, shall be added to the title (T.R.A. P. Rule 5(c)).

Unless an appellant is exempted by statute, these rules, or the Tennessee Rules of Civil Procedure, or has filed a bond for a stay that includes security for the payment of costs on appeal, a bond for costs in civil actions on appeal shall be filed by the appellant in the trial court with the notice of appeal. A

bond for costs on appeal shall have sufficient surety, and it shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed or the payment of such costs as the appellate court may direct if judgment is modified. After a bond for costs on appeal is filed, an appellee may raise on motion for determination by the trial court objections to the form of the bond and/or the sufficiency of the surety (T.R.A.P. Rule 6).

The provisions of the Tennessee Rules of Civil Procedure 65A, regarding other forms of security and sureties, apply to these bonds (T.R.A.P. Rule 6). The Advisory Commission Comment to T.R.A.P. 6 provides that poor persons may be exempted from the security requirement of this rule pursuant to T.R.A.P. 18. Tennessee Rules of Civil Procedure 62.06 sets out the state's exemption for filing a stay or cost bond when it is the appellant.

The record on appeal shall consist of the following (T.R.A.P. Rule 24):

1. Copies, certified by the clerk of the trial court, of all papers filed in the trial court [i.e. complaint or petition, indictments, answer or response to complaint or petition, counterclaims and answer or response, order of commitment for trial (felony cases), petition to intervene and any opposition, motions to dismiss or summary judgment, orders granting or denying motions, any motion made by state or defendant and order rendered (criminal), pre-trial orders, jury verdict (if jury trial), findings of fact and conclusions of law and any memorandum decision entered by the court, all judgments and decrees, petitions for rehearing and order, copy of bond (criminal), notice of appeal, appeal bond or affidavit of indigency, and clerk's certification] except as hereinafter provided;

2. The original of any exhibits filed in the trial court;

3. The transcript or statement of evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether rejected or received;

4. Any requests for instructions submitted to the trial judge for consideration, whether expressly acted upon or not; and

5. Any other matter designated by a party or properly included in the record.

Unless a party otherwise designates in writing, the following papers filed in the trial court shall **not** be included in the record:

1. Subpoenas or summonses for any witness or for any defendant when there is an appearance for such defendant;

2. All papers relating to discovery, including depositions, interrogatories and answers thereto, reports of physical or mental examinations, requests to admit, and all notices, motions or orders relating thereto;

3. Any list from which jurors are selected;

4. Trial briefs; and

5. Minutes of opening and closing of court (T.R.A.P. 24).

On appeal from summary judgment to the Court of Appeals, the following rules relating to the record shall apply (Rules of the Court of Appeals, Rule 4):

1. All pleadings, evidentiary depositions, discovery depositions, answers to interrogatories, affidavits, counter affidavits, admissions, written stipulations, and exhibits attached thereto filed with the clerk on or before the date of the hearing shall be certified and transmitted by the trial clerk and shall be considered a part of the record for the purpose of appeal without further authentication.

2. Any document or exhibit described in (1) which was filed after the date of the hearing will be considered a part of the record on appeal only if authenticated and certified by the trial judge as having been considered in reaching a decision on the motion for summary judgment or if included in a separate transcript of proceedings duly authenticated pursuant to Rule 24, T.R.A.P.

Any paper relating to discovery and offered in evidence for any purpose shall clearly be identified and treated as an exhibit. No paper need be included in the record more than once (T.R.A.P. Rule 24).

If less than the full record on appeal is deemed sufficient to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court and serve on the appellee a description of the parts of the record the appellant intends to include on appeal, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee deems any other parts of the record to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the clerk of the trial court, and serve on the appellant, a designation of additional parts to be included. All parts of the record described or designated by the parties shall be included by the clerk

of the trial court as the record on appeal. The declaration and description of the parts of the record to be included on appeal may be filed and served with the declaration and description of the parts of the transcript to be included in the record (T.R.A.P. Rule 24(a)).

If a stenographic report or other contemporaneously recorded, substantially verbatim recital of the evidence or proceedings is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court, and serve on the appellee, a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal.

If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the clerk of the trial court and serve on the appellant a designation of additional parts to be included. The appellant shall either have the additional parts prepared at the appellant's own expense or apply to the trial court for an order requiring the appellee to do so. The transcript, certified by the appellant, counsel, or the reporter as an accurate account of the proceedings, shall be filed with the clerk of the trial court within ninety days after filing the notice of appeal. Upon filing the transcript, the appellant shall simultaneously serve notice of the filing on the appellee. Proof of service shall be filed with the clerk of the trial court with the filing of the transcript. If the appellee has objections to the transcript as filed, the appellee shall file those objections with the clerk of the trial court within 15 days after service of notice of filing of the transcript.

Within 15 days after filing the notice of appeal, the appellant in a criminal action shall order from the reporter a transcript of such parts of the evidence or proceedings not already on file as the appellant deems necessary. The order shall be in writing; within the same period a copy shall be filed with the clerk of the trial court. If funding is to come from the state, the order shall so state (T.R.A.P. Rule 24(b)).

If no stenographic report, substantially verbatim recital or transcript of evidence or proceedings is available, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant or counsel as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 90 days after

filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. Proof of service shall be filed with the clerk of the trial court with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file those objections with the clerk of the trial court within 15 days after service of the declaration and notice of the filing of the statement (T.R.A.P. Rule 24(c)).

If no transcript or statement of evidence or proceedings is to be filed, the appellant shall, within 15 days after filing the notice of appeal, file with the clerk of the trial court, and serve upon the appellee, a notice that no transcript or statement is to be filed. If the appellee deems a transcript or statement of the evidence or proceedings to be necessary, the appellee shall, within 15 days after service of the appellant's notice, file with the clerk of the trial court, and serve upon the appellant, a notice that a transcript or statement is to be filed. The appellee shall prepare a transcript or statement at the appellee's own expense or apply to the trial court for an order requiring the appellant to assume the expense.

The above provisions concerning the transcript are applicable to the transcript or statement filed by the appellee, except that the appellee shall perform the duties of the appellant and vice versa (T.R.A.P. Rule 24(d)).

If any matter properly includable is omitted from the record, is improperly included, or is misstated, the record may be corrected or modified to conform to the truth. Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court regardless of whether the record has been transmitted to the appellate court. Absent extraordinary circumstances, the determination of the trial court is conclusive. If necessary, the appellate or trial court may direct that a supplemental record be certified and transmitted (T.R.A.P. Rule 24 (e)).

The trial judge shall approve the transcript or statement of evidence and shall authenticate the exhibits as soon as practicable after the filing thereof or after the expiration of the 15 day period for objections by the appellee, as the case may be, but in all events within 30 days after the expiration of said period for filing objections. Otherwise, the transcript or statement of evidence and the exhibits shall be deemed to have been approved and shall be so considered by the appellate court, except in cases where such approval did not occur by reason of the death or inability to act of the trial judge. In such event, a successor or replacement judge shall perform the duties of the trial judge. Authentication of a deposition authenticates all exhibits to the deposition. The trial court clerk shall send the trial judge transcripts of evidence and statements of evidence (T.R.A.P. Rule 24(f)).

Nothing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate and complete account of what transpired in the trial court with respect to those issues that are the bases of the appeal. These rules are not to be construed to prohibit any party in that party's discretion from preparing and filing with the clerk of the trial court a transcript or statement of the evidence or proceedings at any time prior to entry of an appealable judgment or order. Upon filing, the party preparing the transcript or statement shall simultaneously serve notice of the filing on all other parties, accompanied by a short and plain declaration of the issues the party may present on appeal. Proof of service shall be filed with the clerk of the trial court with the filing of the transcript or statement (T.R.A.P. Rule 24(g)and (h)).

If the appealing party does not file a notice of the preparation of the transcript of proceedings or evidence, the trial court clerk shall wait the ninety days before beginning the preparation of the technical record, unless the parties correct the oversight and notify the clerk of their intentions. If notice of designation is filed, the trial court clerk shall follow T.R.A.P. Rule 24 in their preparation of the technical record. T.R.A.P. 26(b) allows any appellee to file a motion to dismiss the appeal in the appellate court if the appellant fails to file the transcript or statement of evidence within the time specified in Rule 24(b) or (c) or otherwise fails to follow the procedure in Rule 24 (d).

The record on appeal shall be assembled, numbered and completed by the clerk of the trial court within forty-five days after filing of the transcript or statement prepared in accordance with Rule 24(b) or (c) of T.R.A.P. or, if no transcript or statement is to be filed, within 45 days after filing of appellant's notice under Rule 24(d) of T.R.A.P. that no transcript or statement is to be filed, unless the time is extended by order or if proof of service of the notice of appeal has not been filed. After filing notice of appeal, the parties shall comply with the provisions of Rule 24 of T.R.A.P. and shall take any other action necessary to enable the clerk to complete the record. The clerk of the trial court shall number the pages at the bottom of the documents comprising the record and shall prepare for transmission with the record an alphabetical list of the documents correspondingly numbered and identified with reasonable definiteness. Copies of all papers filed in the trial court, except the transcript or statement of the evidence or proceedings and exhibits, shall be bound together in chronological order. Exhibits may be bound separately or included in the transcript or statement of the evidence or proceedings (T.R.A.P. Rule 25(a)).

The record on appeal shall be referred to as the record which may be abbreviated "R." It shall be composed of volumes of not more than one hundred and fifty pages each. All references to the record shall be by volume and page number. The record shall be captioned as in the trial court, except

that the caption shall specify the position occupied by each party in the trial court and on appeal (Rules of the Court of Appeals, Rule 3). The cover of the technical record shall contain the trial court name and number, the county, the trial judge's name, the trial court clerk's name, parties involved in suit and designation (plaintiff/ defendant, appellant/appellee), the attorneys' names and addresses along with their Board of Professional Responsibility number. In criminal cases the offense and where the defendant is located (on bond, T.D.O.C. or local jail) and whether the case is a felony or misdemeanor should be on the front.

When the record is complete for purposes of the appeal, the clerk of the trial court shall submit the record to the clerk of the appellate court and shall also transmit the list identifying the documents and certifying the record on appeal. This certification must be signed by the clerk and bear the clerk's seal. Documents of unusual bulk or weight and physical exhibits, other than documents, shall not be transmitted to the appellate clerk. The clerk of the trial court shall notify the parties if any documents or physical exhibits are not to be transmitted. The clerk of the trial court shall transmit any such documents or physical exhibits if directed to do so by a party or the clerk of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits or documents of unusual weight or bulk. Transmission of the record is effected when the clerk of the trial court mails or otherwise forwards the record to the clerk of the appellate court. The clerk of the trial court shall indicate by endorsement on the face of the record or otherwise the date upon which it is transmitted to the appellate court (T.R.A.P. Rule 25(b)).

The clerk of the appellate court shall enter the appeal on the docket immediately upon receipt of the record on appeal and shall immediately serve notice on all parties of the receipt of the record and docketing of the appeal (T.R.A.P. Rule 5(c)).

In specific cases involving juvenile court, a juvenile court clerk does not have the discretion to refuse to file a notice of appeal which seeks to appeal to the wrong court, nor may the juvenile court clerk refuse to prepare the record to appeal to the wrong court. In cases where the juvenile court clerk receives an appeal directed to the wrong court, the clerk does not have an obligation nor the authority to direct that appeal to the proper court (Op. Tenn. Atty. Gen. 96-136 Nov. 22, 1996).

If the record cannot be completed within the time permitted, the clerk of the trial court shall request an extension of time from the appellate court to which the appeal has been taken. The request shall set forth the reason for the requested extension and must be made within the time originally prescribed for completing the record or within an extension previously granted. The time for

completing the record shall not be extended to a day more than 60 days after the date of the filing of the transcript or statement prepared in accordance with Rule 24(b) or 24 (c) of T.R.A.P. or the appellant's notice filed in accordance with Rule 24(d) of T.R.A.P. In the event of the failure of the clerk of the trial court to complete the record within the time allowed, the clerk of the appellate court shall notify the trial court and take such other steps as may be directed by the appellate court (T.R.A.P. Rule 25(d)).

If the record or any part of it is required in the trial court for use there pending the appeal, the trial court may make an order to that effect, and the clerk of the trial court shall retain the record or the parts thereof subject to the request of the appellate court. The clerk of the trial court shall transmit a certified copy of the order together with such parts of the original record as the trial court shall allow and certified copies of any retained parts (T.R.A.P. Rule 25(e)).

The parties may agree by written stipulation filed in the trial court that designated parts of the record shall be retained in the trial court unless thereafter the appellate court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all other purposes (T.R.A.P. Rule 25(f)).

If prior to the time the record is transmitted a party desires to make in the appellate court a motion or application for an order appropriately granted by the appellate court, the clerk of the trial court shall transmit to the appellate court such parts of the record or certified copies thereof as any party shall designate (T.R.A.P. Rule 25(g)).

For failure to complete and transmit the record on appeal in the time and manner provided in these rules, the clerk of the trial court shall forfeit his or her entire cost of preparing and transmitting the record or such portion thereof as appropriate (T.R.A.P. Rule 40(g)).

The clerk of the trial court shall receive a mandate (copies of the judgment, statement of costs, any order as to costs or instructions as to interest, and a copy of the opinion of the appellate court, certified by the clerk of the appellate court) from the clerk of the Supreme Court, with notice to the parties, 11 days after entry of the judgment unless the court orders otherwise. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless the court orders otherwise. If the petition is denied, the mandate shall issue immediately upon the filing of an order denying rehearing.
In cases remanded to the Court of Appeals or Court of Criminal Appeals, a formal mandate shall not issue unless the Supreme Court orders otherwise, but the provisions of this rule are otherwise applicable (T.R.A.P. Rule 42 (a)).

The clerk of the Court of Appeals or Court of Criminal Appeals shall transmit to the clerk of the trial court the mandate of the Court of Appeals or Court of Criminal Appeals, with notice to the parties, 64 days after entry of judgment unless the court orders otherwise. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless the court orders otherwise. The mandate shall issue 64 days after denial of the petition for rehearing or, if the petition for rehearing is granted, 64 days after entry of judgment on rehearing. Issuance of the mandate in all cases shall not be delayed for the taxing of costs. The clerk of the appellate court shall be responsible for collecting the clerk's fees (T.R.A.P. Rule 42 (a)).

Unless otherwise ordered by the Supreme Court, Court of Appeals, Court of Criminal Appeals, or a judge thereof, the timely filing of an application for permission to appeal in the Supreme Court shall stay the issuance of the mandate of the Court of Appeals or Court of Criminal Appeals, which stay is effective until final disposition by the Supreme Court. Upon the filing of an order of the Supreme Court denying the application for permission to appeal, the mandate shall issue immediately (T.R.A.P. Rule 42(b)). In cases in which review by the Supreme Court of the United States may be sought, the appellate court whose decision is sought to be reviewed or a judge thereof, and in any event the Supreme Court of Tennessee or a judge thereof, may stay the mandate (T.R.A.P. Rule 42(c)). The power to stay a mandate includes the power to recall a mandate (T.R.A.P. Rule 42(d)).

The clerk of the trial court shall file the mandate promptly upon receiving it. When the appellate court dismisses the appeal or affirms the judgment and the mandate is filed in the trial court, execution may issue and other proceedings may be conducted as if no appeal had been taken. When the appellate court remands the case for a new trial or hearing and the mandate is filed in the trial court, the case shall be reinstated therein and the subsequent proceedings conducted after at least ten (10) days notice to the parties (T.R.A.P. Rule 43).

Outline of Time Limits Perfecting Appeal

NO.	Person Filing	Item	Time	Where Filed	Rule #*
1**	Appellant	Notice of Appeal	Within 30 days after entry of order	Trial Court	4(a)
2	Appellant	Copy of Notice of Appeal in Civil and Criminal cases	Within 7 days after notice of appeal	Opposing Counsel	5
3	Trial Clerk	Copy of Noticed Appeal in Civil and Criminal Cases received from Appellant	Promptly	Appellate Court designated in the Notice of Appeal	5(a)
4	Appellant	Cost Bond-With sufficient sureties or paupers oath	With Notice of Appeal	Trial Court	6 & 10
5	Appellant	Designation of record if less than full record needed	Within 15 days after Notice of Appeal	Trial Court	24(a)
6	Appellant	Description of parts of transcript if less than full transcript needed	Within 15 days after Notice of Appeal	Trial Court	24(b)
7	Appellee	Designation of record, if any	Within 15 days after service of appellant's designation	Trial Court	24(b)
8	Appellant	Transcript, certified by appellant, his counsel or court reporter as an accurate account with proof of service upon appellee	Within 90 days after filing the Notice of Appeal	Trial Court	24(b)
9	Appellant	Statement of evidence when no T.E. is available	Within 90 days after filing the Notice of Appeal	Trial Court	24(c)
10	Appellant	Notice that no T.E. or statement is to be filed	Within 15 days after filing Notice of Appeal	Trial Court	24(d)

T.E. = Transcript of the Evidence
C.A. = Court of Appeals
C.C.A. = Court of Criminal Appeals
S.C. = Supreme Court

NO.	Person Filing	Item	Time	Where Filed	Rule #*
11***	Trial Judge	Approval of T.E. or statement	Within 30 days after expiration of 15 day objection period	Trial Court	24(f)
12	Trial Clerk	Completion of record	Within 45 days after T.E. or statement or notice that no T.E. or statement is filed	Transmit to Appellate Clerk	25(a) & (b)
13	Trial Clerk	Extension of time for completion of record	Request must be made within 45 day period-no more that 60 days after filing of T.E. or statement may be granted.	Appellate Clerk	25(d)
14	Appellate Clerk	Notice of receipt of record	Upon receipt & filing	Trial Clerk & Counsel or Parties	26(a)
15	Appellate Clerk	Notice of entry of judgment	Same date that the opinion is marked “filed”	All Parties	38
16	Appellate Clerk	Mandate	CA & CCA- 64 days after entry of judgment or immediately after denial by SC of application for permission to appeal; SC-11 days after judgment	Trial Court	42
17	Trial Clerk	Mandate	Upon receipt from appellate court-execution or further proceeding may be instituted as if no appeal had been taken	Trial Court	43
18	Appellate Clerk	Notice of record to be removed or destroyed (Court of Appeals ONLY)	6 months after completion of appellate proceedings	Trial Court & Counsel or Parties	RDA 2306

* Tennessee Rules of Appellate Procedure (T.R.A.P.)

**As of July 1, 1995 the Court of Criminal Appeals will also require a Notice of Appeal be filed with the Appellate Court Clerk.

*** If T.E. is not authenticated by trial judge, it is assumed correct if no objection has been filed.

Effective July 1, 1995.

Master Proceedings

Rule 53. Some clerks, such as the clerk and master, serve as special master upon a judge's reference of a case or portion of a case, to the master on a hearing and report. This process is governed by Rule 53 of the Rules of Civil Procedure. The master should seek a detailed order of reference such that questions to be answered after a hearing are clearly stated. Sometimes, these orders are the product of agreement between the parties.

After the hearing, the master files a written report with the Court and certifies copies to the parties pursuant to Rule 53. Each finding must be supported by a reference to the record so that the court can conveniently understand the master's reasoning. Reports not objected to within 10 days of receipt are confirmed by court order.

Partition or Sale of Land. Partitions are often referred to a master for the findings of specific facts regarding ownership interest, encumbrances, etc. The purpose of the complaint is to sever ownership interests so that citizens are not forced to continue to own property with others when joint ownership is not desired by one or more parties. This area of the law is complex and a master with such a referral should be familiar with particulars as discussed in Gibson's Suits in Chancery and state statutes governing partitions.

A clerk who functions as a master is, like judges, subject to the Code of Judicial Conduct.

Money and Property

The clerk keeps a cash book as a public record in which are listed all sums of money received or disbursed (showing the date of receipt or disbursement), on what account received or disbursed, and to or from whom received or disbursed. This book contains both a direct and a reverse index. It is a Class A misdemeanor for any clerk to fail to keep this book or to fail to allow its inspection (T.C.A. §18-2-101).

It is the duty of the clerk to deliver without delay any money or property in the clerk's hands to the party, agent, or attorney who is entitled to that property and who applies to the clerk for it. Failure to comply with this requirement is a Class C misdemeanor and subjects the clerk and the clerk's surety to liability (T.C.A. §18-2-102).

It is also the duty of the clerk at each term, whenever property has been sold under order of the court, to submit to the court a report showing the property sold, the amount of the sale, the principal and interest collected, the aggregate funds on hand, and the disbursements made, including to whom and when and specifying separately the fees

allowed to the clerk and other officers of court. Any person interested in the report may take exception to it (T.C.A. §18-2-106). The report and any action of the court upon it is to be embodied in a decree, to be entered on the minutes of the court, and the clerk is entitled to no fees or allowances other than those specified and fixed by the decree. The action of the court is subject to the right of appeal by the persons interested, as in other cases (T.C.A. §18-2-107).

Any clerk who, without authority of law, shall use, loan, convert to personal use, or otherwise dispose of any money or property which may have come into the clerk's hands in an official capacity is guilty of a Class C felony (T.C.A. §18-2-105).

It is the additional duty of the clerk to prepare a written financial report describing and identifying the amounts of money or other assets in the office at the end of each fiscal year. This report must include a listing of all cases for which funds are being held and must show the style and the amount held for each case. It must be filed with the proper court within 30 days of the close of the fiscal year. The report shall be available for inspection by the comptroller of the treasury (or designated representative), parties to the litigation and their counsel, and other interested parties (T.C.A. §18-2-103). Should any clerk willfully and corruptly make a false report to the court, this action is a Class A misdemeanor, and, upon indictment or presentment and conviction, the clerk shall be removed from office (T.C.A. §18-2-104).

If a judgment or decree affecting city or county taxes is entered, the clerk must furnish a copy of it to the county trustee or to the city treasurer, comptroller, or other municipal officer collecting taxes (T.C.A. §18-1-115). Clerks collect state and county litigation taxes.

Orders of Protection

Any victim who has been subjected to, or threatened with, or placed in fear of, domestic abuse by an adult who falls into one of the categories set forth in T.C.A. § 36-3-601(9)(A)-(F) may seek relief by filing a sworn petition alleging such domestic abuse by the respondent. Further, any petition filed by an unemancipated person under eighteen years of age shall be signed by one (1) of that person’s parents or by that person’s guardian (T.C.A. § 36-3-602). “Domestic Abuse” is defined by statute to mean inflicting or attempting to inflict physical injury on an adult or minor by other than accidental means, physical restraint, or malicious damage to the personal property of the abused party. Victim means any person who falls within the following categories and who a law enforcement officer has determined is not a primary aggressor:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or have lived together;
3. Adults or minors who are dating or who have dated or who have had a sexual relationship;

4. Adults or minors related by blood or adoption;
5. Adults or minors who are related or were formerly related by marriage; or
6. Adults or minor children of a person described in the preceding 1-5.

"Court" includes any court of record with jurisdiction over domestic relations matters or general sessions court. In counties with a metropolitan form of government with a population of more than one hundred thousand "court" is any court of record with jurisdiction over domestic relation matters and the general sessions court. In such county having a metropolitan form of government, a judicial commissioner may issue an ex parte order of protection and orders of protection matters may be heard by the general sessions court except for matters relating to child custody, visitation, or support. Additional definitions have been added for firearm, preferred response, victim, and weapon. (T.C.A. § 36-3-601).

This procedure for obtaining an order of protection may be used by persons who have filed for a divorce. The filing of a divorce does not dissolve an order of protection, which remains in effect until the court in which the divorce is filed modifies or dissolves the order. (T.C.A. § 36-3-603).

The clerk's office must provide forms to seek an order of protection. Forms are set forth in T.C.A. § 36-3-604. The office of the clerk must assist a person not represented by counsel by filling the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other such assistance as is necessary for the filing of the petition. (T.C.A. § 36-3-604).

Notwithstanding any other provision of law to the contrary, the petitioner shall not be required to pay any filing fees, litigation taxes or any other costs associated with the filing issuance or enforcement of an order of protection authorized by this part upon the filing of the petition. The judge shall assess court costs and litigation taxes at the hearing of the petition or upon dismissal of the petition. If the court, after the hearing, issues or ex10ds an order of protection, petitioner’s court costs and attorney fees shall be assessed against the respondent. The clerk of the court may provide order of protection petition forms to agencies that provide domestic violence assistance. Any agency that meets with a victim in person and recommends that an order of protection be sought shall assist the victim in the completion of the form petition for filing with the clerk. No agency shall be required to provide this assistance unless it has been provided with the appropriate forms by the clerk (T.C.A. § 36-3-617).

Under T.C.A. § 36-3-605, an ex parte order may be immediately issued by the court for good cause. If there is an immediate and present danger of domestic abuse that shall constitute good cause. Within 15 days of service of the order, a hearing shall be held; the ex parte order is in effect until the hearing, at which time the order is dissolved or extended for a period of time not to exceed one year unless another hearing on continuation is held. The court shall cause a copy of the petition and notice of the date

set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served on the respondent at least five days prior to the hearing. This notice shall advise the respondent that he or she may be represented by counsel.

Any order of protection shall include a statement of the maximum penalty which may be imposed pursuant to T.C.A. § 36-3-610 for violating the order of protection. A copy of any order of protection and any modifications shall be issued to the petitioner, the respondent, and the local law enforcement agencies having jurisdiction in the area where the petitioner resides. The local law enforcement agency enters the order in the Tennessee Crime information system. The officer serving the order of protection must read the order to the respondent unless the respondent is served out-of-state as provided by statute. (T.C.A.§ 36-3-609)

Provisions regarding violations and arrests for violations are set forth in T.C.A. § 36-3-610 and § 36-3-611. Contempt of court is a possible penalty; general sessions judges have the same contempt powers as courts of record to punish for contempt under these procedures. A judge of the general sessions court who is not a licensed attorney shall appoint an attorney referee to hear charges of criminal contempt. In addition to the authorized punishments for contempt of court, the judge may assess any person who violates an order of protection or a court-approved consent agreement a civil penalty of fifty dollars. Upon collecting the civil penalty imposed, the clerk shall on a monthly basis, send the money to the state treasurer who shall deposit it in the domestic violence community education fund.

Violation of an order of protection can result in an arrest, with or without a warrant, although an ex parte order cannot be enforced by arrest under these provisions unless it has been served or the respondent otherwise has actual knowledge of the order. A person arrested is taken before a magistrate or the court without unnecessary delay to answer for contempt for violation of the order of protection. The court shall notify the clerk to set a time for a hearing on the alleged violation of the order of protection within 10 working days after arrest, unless extended by the court on the motion of the arrested person. The court also sets the bond pending the hearing, notifies the person who has procured the order of protection, and directs the party to show cause why a contempt should issue (T.C.A. § 36-3-612).

After an adult who falls into one of the categories set forth in T.C.A. § 36-3-601(9)(A) - (F) has been arrested for assault (T.C.A. § 39-13-101) or aggravated assault (§ 39-13-102), the arresting officer shall inform the victim that the person arrested may be eligible to post bond for the offense and be released until the date of trial for the offense (T.C.A. § 36-3-615).

Any valid protective order relating to abuse, domestic abuse, or domestic or family violence, issued by a court of another state, shall be afforded full faith and credit by the courts of this state and enforced as if it were issued by this state (T.C.A. § 36-3-622).

Prejudgment and Postjudgment Remedies

Prejudgment Remedies. T.R.C.P. Rule 64 preserves the statutory remedies for securing the satisfaction of a judgment, but under some circumstances these may be obtained before a judgment is rendered. A party may seek one of the remedies listed in this rule at the commencement or during the course of an action if it has become apparent that property presently in the state may not be available for the enforcement of a judgment. The clerk's office may provide forms for some of the following remedies:

1) Attachment. At the commencement or during the course of an action, a party may sue out an attachment against the property of a debtor or defendant, who appears to be removing, absconding with, destroying, or concealing property (T.C.A. § 29-6-101).

2) Creditors' Bill. Any creditor, without first having obtained a judgment, may file a bill to set aside a fraudulent conveyance or other device resorted to for the purpose of delaying or hindering creditors, and the court may subject the property, by sale or otherwise, to the satisfaction of the debt (T.R.C.P. 18.02; T.C.A. § 29-12-101 *et seq.*).

3) Detainer and Ejectment. When a defendant enters real property by contract as a tenant, or by collusion with a tenant, and holds possession unlawfully, the owner of the property may bring an action for recovery of the real property, or for ejectment, or for forcible entry and detainer (T.C.A. § 29-18-101 *et seq*.). Upon a decision in favor of the plaintiff, the court may issue a writ of possession under which the sheriff is commanded to place the plaintiff in possession of the premises (T.C.A. § 29-15-114; T.C.A. § 29-18-130).

4) Garnishment. Where the property of the debtor is in the hands of third persons, or third persons are indebted to the debtor, the property may be attached by garnishment (T.C.A. § 29-7-101 *et seq*.).

5) Replevin or Action to Recover Personal Property. Where goods, chattels, or other items of tangible personal property are in the possession of another, the person entitled to possession may recover such property by filing an action (T.C.A. § 29-30-101).

6) *Lien Lis Pendens (*The general Latin translation is "lien pending dispute"). A *lien lis pendens* preserves for judgment the property which is the subject of the litigation. The party seeking to fix a *lien lis pendens* on real estate must file in the county register's office an abstract, certified by the clerk, containing the names of the parties to such suit, a description of the real estate, its ownership, and a statement of the nature and amount of the lien to be fixed (T.C.A. § 20-3-101; T.C.A. § 26-4-104).

7) *Ne Exeat* (The general translation is "no exit"). In cases where the attachment of property is either impossible or inadequate as a remedy, the plaintiff may apply for a writ of *ne exeat*. The writ prohibits the defendant from escaping the jurisdiction of the court. The writ requires the defendant to give security sufficient to insure that he or she will not depart the state without leave of court (T.C.A. § 29-1-106).

8) Sequestration. T.R.C.P. Rule 70 governs the enforcement of a judgment when a party fails to satisfy the judgment within the time specified (*See also* T.C.A. § 21-1-801).

The United States Supreme Court has established procedural due process safeguards for the defendant that limit the circumstances under which a statute may permit the seizure of person or property prior to a hearing or final judgment.[49]

Postjudgment Remedies. Having obtained a judgment, the creditor's next step is collection. If payment of a judgment for money is not forthcoming, it will be necessary for the judgment creditor to collect by means of execution or garnishment (T.R.C.P. Rule 69). Execution must be levied against personal property first; execution may be levied against real property only if the personal property is insufficient to satisfy the judgment (T.C.A. § 26-3-101). Where the property of the debtor is in the hands of third persons, or third persons are indebted to the debtor, the property may be reached by garnishment (T.C.A. § 26-2-201 *et seq*.). Most of the other remedies discussed above under Prejudgment Remedies are also available to the postjudgment creditor.

Exemptions. As part of the garnishment procedure the judgment debtor must receive notice of the exemptions available under federal and state law, as well as the procedures for claiming the exemptions and the right to apply for a stay of garnishment or a slow pay order (T.C.A. § 26-2-214).

Tennessee Code Annotated § 26-2-409 requires the clerk of the court to provide forms for judgment debtors to use in filing a motion to quash an execution or garnishment on the ground of exemption rights, in otherwise asserting their exemption rights, or in filing a motion to pay in installments. The clerk may provide the appropriate form upon request or by printing it on the back of the notice required by Tennessee Code Annotated, §§§ 26-2-216, 26-2-404, 26-2-409.

Records

Record Storage. Instead of the well bound docket books listed in items (5) and (6), the clerks may, subject to the approval and under the direction of the judge, use a file card system whereby a card would be kept in a loose-leaf file drawer under lock and key; entries required by law to be put on the docket are entered upon this card (T.C.A. §18-1-105(b)).

The Tennessee Code (T.C.A. § 18-1-105(c); T.C.A. §10-7-121) also allows computer storage of this information as long as the following standards are met:

1. The information is available for public inspection, unless it falls under one of the confidentiality exceptions;

2. Due care is taken to maintain the information during the time it is required by law to be retained as a public record;

3. The information is copied daily to computer storage media; all of these over one week old must be stored in a building different from the place where the originals are kept;

4. The clerk can provide a paper copy of the information when requested by a member of the public (T.C.A. §18-1-105).

Public Records. Generally clerks' records are public, unless they are ordered sealed by a court or made confidential by statute, and must be open to inspection free of charge (T.C.A. § 10-7-503). The clerk is allowed a fee for copies (T.C..A § 8-21-401) and may adopt reasonable rules for viewing and copying records (T.C.A. §10-7-506), but is not required to sell or provide copies of the computer storage media on which records are stored (T.C.A. § 18-1-105). If the clerk refuses to allow members of the public access to any public record, the person denied access can file a petition in the chancery court to obtain access to them (T.C.A. § 10-7-505).

There are specific statutes requiring confidentiality of state tax information (T.C.A. § 67-1-1702; T.C.A. § 67-4-722) which contain the following provisions:

> *Notwithstanding any provision of law to the contrary, returns, tax information and tax administration information shall be confidential and, except as authorized by this part, no officer or employee of the state and no other person (or officer or employee thereof) who has or had access to such information shall disclose such information obtained by such officer or employee in any manner in connection with such officer's or employee's service as such officer or employee, or obtained pursuant to the provisions of this part, or obtained otherwise. (T.C.A. § 67-1-1702).*

Violation of this state confidentiality statute is a Class E felony, conviction of which results in dismissal from office (T.C.A. § 67-1-1709).

Confidential Records. Exceptions to the general legal principle that all clerk's records are public are: 1) adoption records; 2) juvenile court records; and, 3) court sealed records.

Adoption records are confidential by statute (T.C.A. §36-1-125 and 126). The unauthorized disclosure of adoption records, including home studies or other

information obtained in connection with the adoption, is a class A misdemeanor. If the disclosure is for a malicious purpose, it is a class C felony. (T.C.A. §36-1-125).

The legislature amended T.C.A. §36-1-127 effective 1996 to allow the release of adoption records by the Department of Children's Services to adopted persons over the age of 21 years. If an adopted person who is 21 years of age or provides written express consent, the Department shall also release adoption records to the parents, siblings, lineal descendants or lineal ancestors of the adopted person. The Tennessee Supreme Court upheld the constitutionality of this statute in *Doe v. Sundquist* in 1999. A court may still order the release of information from adoption records in certain conditions (T.C.A. §36-1-138).

Juvenile court records are confidential by statute. (T.C.A. §37-1-153). There is an exception to the confidentiality of these records. Petitions and orders of the court in delinquency proceedings shall be opened to public inspection if the juvenile is 14 years or older at the time of the alleged delinquent act and the delinquent act constitutes first or second degree murder, rape or aggravated rape, aggravated or especially aggravated robbery, kidnapping, aggravated or especially aggravated kidnapping. This exception only allows the disclosure of the order and petition and all other information contained in the court remains confidential. A 1999 amendment to this statute provided that a violation of this statute shall be punished as criminal contempt of court.

A court may order a record be sealed. This process is usually initiated by a party to the lawsuit. Records designated to be sealed by court order should be given special attention to ensure that they remain confidential in nature. In practice, clerks do not seal docket entries regarding filings. It is the document itself which is placed under seal.

Expungement of Records. The record management duties assigned to court clerks by the state legislature are significant. Not only must certain records be kept on a permanent basis, they must also be accessible to the public. Further, there are corollary duties which require a court clerk to expunge certain records upon petition. Expungement means actual deletion of some records so that they no longer exist within the system. State statutes creating these duties must be carefully reviewed and followed. A court clerk in charge of criminal records and/or divorce should review and seek advice, if needed, regarding expungement duties mandated at T.C.A. § 40-32-101 et. seq. (criminal cases) and T.C.A. § 36-4-127 (divorce).

Also see T.C.A. § 40-35-313(c)(2) regarding the provision that, after October 1, 1998, a defendant applying to a court for expungement following successful completion of the diversion program under § 40-35-313 shall be assessed a $50 fee. The fee shall be transmitted by the clerk to the state treasurer for deposit in the special fund established in § 40-32-101(d). See Section VI. for the correct form to use in such cases.

Index of Public Records. Every clerk shall keep an index in each book where any suit, decree, judgment, sale, or other record is to be kept. This index must be in alphabetical order under the name of each party, such that the judgment, decree, or sale may be found under the name of either party to any transaction of record (T.C.A. §10-7-201). Any clerk failing to keep such an index shall be guilty of a Class C misdemeanor (T.C.A. §10-7-208).

Clerks of courts of record are also required to index and cross index each record of the minutes of the courts and the execution dockets, showing in the direct index, in alphabetical order, the name or names of plaintiffs or complainants, and against whom the suit is or was brought; the cross or reverse index must show the name or names of defendants, in alphabetical order, and by whom the suit is brought (T.C.A. §10-7-209). A clerk is guilty of a Class C misdemeanor for failure to comply with the above provisions (T.C.A. § 10-7-210).

Clerks of the courts of record are also required to keep a judgment index in which the name of each person, partnership, firm, or corporation against whom a judgment or decree is rendered is to be entered alphabetically, along with the date, number of the cause, and amount of the judgment. Each page of the judgment index must list the following five columns (although one page may contain two sets): Name. Date. No. Cause. Amount. (T.C.A. § 18-1-106

Reporting to the Department of Correction

Within five days after adjournment of court or final disposition of a case, the clerk must notify the commissioner of correction of the number of convicts for the penitentiary (T.C.A. § 40-23-106).

Retention and Disposal of Records

Clerks are required to produce and maintain a large volume of records. Over time, if proactive steps are not taken to manage the records of the office, they will begin to create serious storage problems. However, since most records in government offices are public records and have value and importance to the community, efforts to maintain office efficiency must be balanced against the need to preserve records that have financial, informational, political or historical value.

In recognition of the problems that counties encounter with records disposition, the General Assembly has created a statutory framework for the storage and disposition of county records (T.C.A. § 10-7-401 *et seq.*). This statutory scheme begins by establishing classes of records based on the length of time they need to be kept. The law divides records according to whether they are temporary records, which are only useful or necessary for a established period of time, or records of permanent value

which must be preserved in some format indefinitely. The University of Tennessee, County Technical Assistance Service, in cooperation with the State Library and Archives and the Division of Records Management, is required by law to publish schedules of retention and/or disposition for records of county offices. (T.C.A. § 10-7-404). A revised edition of these schedules was published in 1999 in a manual entitled *Records Management for County Governments.*

However, management of office records is not as simple as consulting a retention schedule. The law also provides for oversight of records management through a series of checks and balances to insure that important information is not lost. Ever since 1994, each county has been required by law to establish a County Public Records Commission to oversee the storage or disposal process. (T.C.A. § 10-7-401). The Commission has the right to authorize the destruction of original paper permanent records which have been reproduced into electronic or microphotographic formats. (T.C.A. § 10-7-404). The County Public Records Commission also has the authority to promulgate reasonable rules and regulations pertaining to the making, filing, storage, exhibiting, and copying of reproductions of records. (T.C.A. § 10-7-411).

For clerks of court, there are additional statutory provisions in the law which provide specific instruction for management of court records (T.C.A. § 18-1-201 *et seq.*). As a general rule, clerks of the courts of record in Tennessee are authorized to make such disposition of records, dockets, books, ledgers and other documents as the judges of their respective courts may severally direct, subject to statutory direction and limitations. (T.C.A.§ 18-1-201).

The Tennessee Code authorizes clerks of courts of record to dispose of documents pertaining to a case, except for pleadings, original process and original opinion, original rules, appearance and execution dockets, minute books, and plat or plan books, if final disposition occurred more than 10 years ago and if the judge so orders (T.C.A. § 18-1-202(a)). In civil cases, a judge may order the clerk to destroy discovery materials, briefs, cost bonds, subpoenas and other temporary records three (3) years after the final disposition of the case or three (3) years after records sealed by order of the court have been unsealed. When such order is entered, the court clerk shall notify the parties of a three year disposition schedule for temporary records filed by the parties during the three-year period.

Any order issued by any of the judges of courts of record, as authorized above, shall be entered on the minutes of the court, setting forth generally what papers, books, documents, and records may be disposed of; a detailed inventory in the minute entry is not required (T.C.A. § 18-1-203). This disposition of these materials is to be ordered annually by the court, or at such other times as may be thought advisable (T.C.A. § 18-1-205). Before the clerk destroys or otherwise disposes of any dockets, book, papers, ledgers, and documents, the clerk must give 90 days' notice to the state librarian and archivist (or representative) who is to examine the material and preserve in the librarian's possession any document, book, ledger or record believed to be of value for

historical or other scholarly purposes (T.C.A. § 18-1-204). It is also recommended that the clerk give notice of the destruction of records to County Public Records Commission when acting pursuant to court order.

Physical evidence other than documents and firearms used in judicial proceedings and in the custody of a court in cases where all appeals or potential appeals of a judgment have ended or when the cases have been settled, dismissed, or otherwise brought to a conclusion, may be disposed of as follows:

(1) The clerk of the court having custody of the physical evidence to be disposed of shall notify the attorneys of record in the cases for which such evidence was used that certain enumerated items are no longer needed by the court and that they have 30 days from the date of notification to claim any of the items belonging to them or their clients. If after 30 days the attorneys have not claimed and removed these items of evidence, the clerk shall dispose of the evidence in the manner prescribed below;

(2) The clerk of the court having custody of the physical evidence to be disposed of shall inventory it annually and prepare a list of the evidence proposed to be destroyed with references to the case involved and the term of court in which the evidence was used;

(3) The clerk shall publish in a newspaper of general circulation in the county for three consecutive weeks the proposed list of items of physical evidence selected for disposition;

(4) Parties interested in the disposition of physical evidence may submit a petition to the court stating their objections to the proposed disposition within 30 days of the initial newspaper publication;

(5) After the time for filing petitions objecting to the disposition has passed, the clerk shall submit the list, together with any petition that was filed in response to the notice, to the court. The court shall approve or reject each item on the list and shall order that each particular item be disposed of in one of the following ways:

    (1) Returned to owner or the owner’s attorney of record if the attorney agrees;

    (2) Preserved by a specified organization for historical purposes;

    (3) Sold; or

    (4) Destroyed.

(6) The clerk shall deliver the order and the items approved for disposition to the custody of the sheriff or the chief of police in counties having a metropolitan form of government, for disposition in accordance with the order of the court; and

(7) The sheriff shall deliver the physical evidence to the owner(s) or to organization(s) when so ordered, personally or by return receipt mail. When ordered to sell physical evidence, the sheriff shall advertise the sales in a newspaper of general circulation for not less than three editions and not less than 30 days prior to the sales. The sheriff shall conduct a public sale and maintain a record of each sale and the amount received. The proceeds of the sale(s) shall be deposited in the county general fund. When ordered to destroy physical evidence, the sheriff shall completely destroy each item by cutting, crushing, burning or melting and shall file an affidavit concerning such destruction with the clerk of the court ordering the destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses. In counties having a metropolitan form of government, the chief of police is charged with these duties.

These provisions shall not act to amend or repeal any private acts which provide for disposal of physical evidence or exhibits used in any judicial proceedings in Shelby County (T.C.A.§ 18-1-206).

For further information about records management and disposition and to find retention schedules for the records of the court clerks' offices, consult the CTAS publication *Records Management for County Governments.*

Subpoena

Upon the request of a party, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court in which the action is pending. According to Rule 45 of the Tennessee Rules of Civil Procedure, which governs issuance of a subpoena, this document must state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at the time and place and for the party therein specified. The clerk (or other authorized officer) shall issue a subpoena, or a subpoena for the production of documentary evidence, signed but otherwise in blank, to a party requesting it, who shall fill it in before service. A subpoena may also command a witness to produce the books, papers, documents, or tangible things designated therein. The court, upon a timely filed motion, may quash or modify a subpoena. A subpoena may be served by any person authorized to serve process, or the witness may acknowledge service in writing on the subpoena.

When there are two or more defendants in any case, civil or criminal, and a subpoena for witnesses or other process issues on application of only one of the defendants, the clerk shall mark thereon at whose instance it issued (T.C.A. §18-1-107). A court clerk is required to issue a subpoena for each witness whose name is endorsed on an indictment by the district attorney general. The full address and telephone number of each prospective witness is not required on the indictment, but should be supplied, if known, to the court clerk in order to insure service of process of the subpoena. A court clerk does not have the statutory authority to require the district attorney general's office to prepare subpoenas.

A court clerk's duties include preparation and issuance of subpoenas from information given to the clerk by the district attorney general's office or a defendant.[50]

Subpoena to a Bank or Other Financial Institution for Records of a Customer

An effective subpoena for bank records will comply with the privacy and other provisions found in the Financial Records Privacy Act. (T.C.A. § 45-10-101 et seq.) These statutes were designed to protect the bank which holds the records and to protect the privacy of the customer. The Act, for example, requires that the subpoena be served upon the customer who is allowed a set number of days to object to the subpoena. You may be asked for advice about what information must be included in the subpoena or other questions about how the Act's provisions actually work.

Some clerks refer a person with questions to the legal department of the bank so that compliance with the Act can be discussed. All clerks should be aware that they are not the "issuer" of the subpoena as that term is used in the Act and that advice about the subpoena is not the responsibility of the clerk.

The Clerk should be aware that in many cases, financial records will be delivered to the Clerk in response to the subpoena. This will be the case, for example, when the records are subpoenaed for a hearing. These records should be sealed when you receive them and should remain sealed until opened at the direction of the court in the hearing or otherwise by order. (T.C.A. § 45-10-112)

The financial institution is entitled to its reasonable cost of providing the records. (T.C.A. § 45-10-109) An affidavit as to reasonable costs is sufficient proof of the expense, which shall be taxed as costs of court. (T.C.A. § 45-10-113)

Tennessee Judicial Council Reports

Rule 11. Pursuant to Rule 11, Rules of the Supreme Court, the clerks of the circuit and chancery courts of the state are required to submit civil case cover sheets to the Administrative Office of the Courts (AOC). These forms should be mailed to the Technology Division of the AOC no later than the 15th of every month when a case is filed and again when it is disposed.

The clerks of the criminal court are also required to submit Criminal Cover Sheets, which have been completed by the District Attorney's office, for any original criminal action. The criminal court clerks are responsible for the completion of the Criminal Case Cover Sheet when any petition is filed to reopen a case or upon the disposition of any case. These forms shall be forwarded to the AOC on a monthly basis.

The clerks' offices which are automated should report statistical data monthly on computer diskette. The Civil and Criminal Case Cover Sheets will be provided to the clerks' offices and the district attorneys' offices by the AOC.

Please contact theTechnology Division of the Administrative Office of the Courts if you have any questions regarding such reports.

Damages and Torts Report. Tennessee Code Annotated § 16-21-111 requires the clerks of court and the clerks and masters to report additional information monthly on the bottom portion of the Civil Case Cover Sheets concerning the number of cases filed claiming money damages for personal injury or death. This portion of the form need only be filled in if:

- The case is a damages and torts case where the plaintiff was awarded money for personal injury or death;
- If the case proceeded to trial and money was awarded by the judge or a jury;
- The case was not a worker's compensation case;
- the case was not for property damage or loss of right;

If the case meets the above criteria, the monetary amount of the award should be filled in at the bottom of the Civil Case Cover Sheet. If the case has multiple awards, report the total of the awards. If any additurs or remitturs occur in the case, they must also be reported on the bottom of the sheet.

The presiding judge in each circuit shall verify the trial data reported to the AOC, which then compiles the data and reports to the chairman of the Senate Judiciary Committee, the chairman of the House Judiciary Committee, and the attorney and reporter. The report is a public document, available on request from the Administrative Office of the Courts (T.C.A. § 16-21-111).

[13] *6 Tenn. Juris. Clerks of Courts § 12 (1983).*

[14] *6 Tenn. Juris. Clerks of Courts § 11 (1983) .*

[15] *Hine v. Commercial Carriers, Inc., 802 S.W.2d 218 (Tenn.1990).*

[16] *Cline v. Lazy Eights Flight Center, 15 TAM 5-15 Tenn.App. (W.S., 1989).*

[17] *Little v. Franceschini, 688 S.W.2d 91 (Tenn. App.1985).*

[18] *Op. Tenn. Atty. Gen. U91-79 (May 29, 1991).*

[19] *Thomas v. Anderson, 222 Tenn. 204, 435 S.W.2d 109 (Tenn.1968).*

[20] *These requirements resolve the problems presented in Yearout v. Trusty, 684 S.W.2d 612 (Tenn. 1984). Rule 58, Advisory Commission Comment.*

[21] *Steele v. Wolfe Sales Co., 663 S.W.2d 799 (Tenn.App.1983).*

[22] *Pennington v. Pennington, 592 S.W.2d 576 (Tenn.App.1979).*

[23] *In re Galiardi, 745 F.2d 335 (6th Cir.1984); Jerkins v. McKinney, 533 S.W.2d 275 (Tenn.1976).*

[24] *Continental Cas. Co. v. Smith, 720 S.W.2d 48 (Tenn.1986).*

[25] *Henry County v. Summers, 547 S.W.2d 247 (Tenn.App.1976).*

[26] *Zeitlin v. Zeitlin, 544 S.W.2d 103 (Tenn.App.1976).*

[27] *Cantrell v. Humana of Tennessee, Inc., 617 S.W.2d 901 (Tenn.App.1981).*

[28] *Steele v. Steele, 757 S.W.2d 340 (Tenn.App.1988); Gillespie v. Martin, 172 Tenn. 28, 109 S.W.2d 93 (1937); Hines v. Thompson, 25 Tenn.App. 86, 148 S.W.2d 376 (1941).*

[29] *Legal Issues For State Court Clerks: Issues and Answers, John Robertson, Clerk and Master, Shelby County, The University of Tennessee, Center For Government Training (1987).*

[30] *Op. Tenn Atty. Gen. U90-89 (May 11, 1989).*

[31] *Portions of the preceding section were taken from the Tennessee County Government Handbook, The University of Tennessee, County Technical Assistance Service, (4th Edition, 1994).*

[32] *This section was originally prepared by John Robertson, Shelby County Clerk and Master. It has been updated to reflec subsequent changes in the Tennessee Rules of Civil Procedure.*

[33] *See Advisory Commission Comments to Rule 5, Tennessee Rules of Civil Procedure.*

[34] *Mitchell v. Jennings 868 SW2d 276 (Tenn. Ct. App. 1993)*

[35] *Gibson's Suits in Chancery, Chapter 18 (7th ed. 1988).*

[36] *Legal Issues For State Court Clerks: Issues and Answers, John Robertson, Clerk and Master, Shelby County, University of Tennessee, Center For Government Training (1987).*

[37] *Cook v. McCullough, Tenn Ct. App. M.S. (11/2/89); Op. Tenn. Atty. Gen. U89-133 (November 28, 1989).*

[38] *County Property Taxes: A Guide to Collection, The University of Tennessee, County Technical Assistance Service (2d ed*

[39] *Op. Tenn. Atty. Gen. 86-130 (July 22, 1986).*

[40] *State v. Delinquent Taxpayers, 785 S.W.2d 819 (Tenn. App. 1989).*

[41] *The penalty under § 67-5-2410(a)(1)(A) is not an attorney's fee, but rather a penalty for the county's expense of prosecu for delinquent taxes. Op. Tenn. Atty. Gen. U90-53 (March 16, 1990).*

[42] *Mennonite Bd. of Missions v. Adams, 462 U. S. 791 (1983). See also Op. Tenn. Atty. Gen. 84-208 (June 27, 1984).*

[43] *Watson v. Waters, 694 S.W.2d 527 (Tenn. App. 1984).*

[44] *85 C.J.S. Taxation § 801 (1954).*

[45] *Sherrill v. State Bd. of Equalization, 452 S.W.2d 857 (Tenn. 1970).*

[46] *85 C.J.S. Taxation § 809 (1954). See also Salts v. Salts, 190 S.W.2d 188 (1945).*

[47] *State v. Southern Lumber Mfg. Co., 57 S.W.2d 454 (Tenn. 1933). The better alternative would be to make the report b the sale to correctly ascertain all amounts due on the property at the time of the sale.*

[48] *Minority Employees of Tennessee Department of Employment Security, Inc. v. State of Tennessee, Department of Empl Security, April 26, 1990 (6th Cir.).*

[49] *North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 95 S.Ct. 719, 42 L.Ed.2d 751 (1975); Mitchell v. W.T. Grant Co., 416 U.S. 600, 94 S.Ct. 1895, 40 L.Ed.2d 406 (1974); Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), rehearing denied 409 U.S. 902, 83 S.Ct. 177, 34 L.Ed.2d 165; Sniadach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969).*

[50] *Mitchell v. Jennings 868 Swwd 276 (Tenn Ct. App. 1993)*

IV. ETHICS, OUSTER AND LIABILITY

CHAPTER CONTENTS

IV. ETHICS, OUSTER AND LIABILITY

Financial Conflicts of Interest

Conflict of interest problems are most likely to confront the clerk who purchases the supplies for the office out of the fee account. The clerk must also take care to insure that no personal interest is involved in decisions made in a fiduciary capacity (such as the investment of funds belonging to third parties). The basic conflict of interest provision of the state law prohibits the direct personal financial interest of the clerk in contracts, purchases, or work over which the clerk would have a duty to, in any manner, overlook or superintend. This conflict of interest statute (T.C.A. §12-4-101) states in pertinent part:

> *(a) It is unlawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility districts, human resource agencies, and other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official himself or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" shall include the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.... .*
>
> *(b) It is unlawful for any officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development districts, utility districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges his interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.*

The statute only prohibits conflicts of interest when the county official has a financial interest and will be voting for, overlooking, letting out, or in some manner superintending the work or contract. For example, under this general law, a clerk probably could bid on providing ambulance service for the county, or selling computer equipment to the highway department, if that clerk would not be voting for or overlooking the contract in any manner. However, a clerk cannot bid on or sell computer equipment to the clerk's own office. (Some counties are under more stringent conflict of interest provisions which are discussed later.) The penalty for violation is forfeiture of all compensation made pursuant to the contract, dismissal from the office, and ineligibility for the same or similar office for ten years (T.C.A. §12-4-102).

Only pecuniary interests are prohibited under this statute. If a clerk receives no direct pecuniary interest, but is interested in a contract from another standpoint, that interest

would not be prohibited under the statutory language so long as the clerk gained no personal financial benefit from the contract. An example would be a case of the clerk's hiring a friend to work in the clerk's office. Since the clerk would gain no financial benefit, no prohibited conflict of interest exists. However, a common law conflict of interest (as opposed to the statutory conflict of interest discussed above) may exist under Tennessee case law in some circumstances involving interests other than financial ones.

The question often arises as to whether it is proper for a county official to have authority over a matter that will result in a direct financial benefit to a relative, such as purchasing copying equipment from a nephew. The question becomes more complex when the person who will receive the direct financial benefit is the spouse of a county official. In a question involving the propriety of a person who was a member of the county board of education voting on matters affecting the salary of the spouse of that board member, the attorney general has opinioned[51] that if the spouses commingle assets, the board member has an indirect conflict of interest and must acknowledge the interest and recuse himself or herself from voting. If the spouses do not commingle assets, it was the opinion of the attorney general that the board member should not vote as a matter of public policy. If the clerk recuses himself or herself as a matter or public policy, the question of how to award an employment contract to a spouse is difficult. This is especially troublesome because, although no anti-nepotism statute is in effect, it is possible that the hiring of a spouse by the clerk could be considered a prohibited conflict of interest, particularly where assets of the couple are commingled.

The disclosure of an indirect interest is required by the statute, which calls for "public acknowledgment" of such interests. What is necessary for public acknowledgment is unclear, especially in the context of an official such as the clerk acting independently, as opposed to a member of the county legislative body announcing at a regular meeting that the member has an indirect interest prior to a vote. A clerk should therefore be careful in indirect conflict of interest situations to provide public notice of these interests prior to taking any action. For example, if a clerk purchases supplies from a corporation in which the clerk owns a small minority (not plurality) interest, this must be disclosed publicly. Because the clerk has no natural public forum, some form of written public notice via bulletin boards in the courthouse and notice in a newspaper in general circulation in the county may be appropriate.

It is important to note that none of the conflict of interest statutes make any distinction based on amount of financial interest where there is a direct interest. Any direct financial interest is prohibited. However, the attorney general has indicated that a significant interest might be required, as opposed to a de minimis interest. Since it would be very difficult to determine what a court might hold to be significant, and since the penalty for violation of the conflict of interest statute is so severe, a clerk would be well advised to consider any interest as significant.[52]

Other Statutory Conflict of Interest Provisions

The 1957 County Purchasing Law (T.C.A. § 5-14-101 *et seq.*) and the 1981 County Financial Management Act (T.C.A. § 5-21-101 *et seq.*) both contain conflict of interest provisions. These are optional general laws and may or may not be in effect in a particular county. All of these provisions are at least as stringent as the general statute (T.C.A. § 12-4-101) discussed above.

The 1981 Financial Management Act contains the most stringent conflict of interest provisions. This statute provides:

> *The director, purchasing agent, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission shall not be financially interested or have personal, beneficial interest, either directly or indirectly, in the purchase of any supplies, materials or equipment for the county. (T.C.A. § 5-21-121).*

In addition to county officials and officers, this statute includes county employees within its prohibition. Further, the statute makes no distinction as to whether the interested person has any authority over the purchasing decision. The broad language of this statute prohibits county officials, officers and employees from having any financial interest in any purchases made by the county.

No special definitions of direct or indirect financial interests are found in the 1981 Financial Management Act (the "1981 Act"). Therefore, the general law definitions should be used for purposes of application of this provision involving purchasing of supplies, materials or equipment for the county. Under the 1981 Act, the Director of Finance or a Purchasing Agent makes purchases for offices such as the clerk. However, even though a Purchasing Agent makes the purchase following a requisition from the clerk, the clerk may not bid on the contract because of the broad language of the statute.

A similar situation holds in those counties under the County Purchasing Law of 1957, but the prohibition does not include county employees. The conflict of interest statute contained in the County Purchasing Law of 1957 states:

> *(a) Neither the county purchasing agent, nor members of the county purchasing commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government.*
>
> *(b) Nor shall any such persons accept or receive, directly or indirectly, from any person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation.*

(c) Any violation of this section shall be deemed a Class D felony and shall be punishable by fine or imprisonment or both. (T.C.A. § 5-14-114).

Conflicts of Interest Based on Offices or Employment

Any county employee who is otherwise qualified may serve as a member of the county legislative body, notwithstanding the fact that the person is a county employee, except persons elected or appointed as county executive, sheriff, trustee, register, clerk, assessor of property, or any other countywide office filled by the vote of the people or the county legislative body (T.C.A. § 5-5-102). Countywide officeholders cannot be nominated for or elected to membership in the county legislative body.

However, deputy trustees, secretaries and assistants may simultaneously hold the office of county legislative body member. Particular care must be taken to publicly acknowledge interests concerning matters relating to employment for such an employee/county legislative body member. Detailed procedures for acknowledging conflicts of interest and restrictions on voting are set out by statute for these county legislative body members (T.C.A. § 5-5-102 and §12-4-101). A county legislative body member may hold that office and run for another office, such as clerk, so long as the county legislative body is not filling the position. However, the person cannot hold both offices simultaneously.[53]

Perks and Bribes

Bribery. It is a criminal offense for an elected official to accept any bribe (T.C.A. § 39-16-102). Bribery, as commonly understood, is the act of giving or receiving a gift for the purpose of effecting the improper discharge of a public duty. A "kickback" is a bribe involving the payment of money or property to an individual for causing the county to buy from, to use the services of, or to otherwise deal with, the person making the payment. A kickback is often viewed as specific inducement for a particular sale, or as a reward for accomplishing a particular purpose.

Bribery is a Class C felony (T.C.A. § 39-16-102(c)), and any clerk convicted under this statute may be imprisoned for not less than three nor more than fifteen years and fined up to $10,000 (T.C.A. § 40-35-111). Persons convicted of attempting to bribe a public official are subject to the same punishment.

The classic kickback situation, on a county level, involves a county official who is approached by a sales agent and is offered 10% of the purchase price if the county purchases his or her equipment. The official is influential in the subsequent purchase of the equipment and receives the promised "cut." Both parties are guilty of bribery. It does not matter which party initiated the illegal transaction. Further, if the county official solicited the kickback, the county official would be guilty of bribery regardless of whether the sales agent agreed to pay the bribe. While bribery in terms of money is the most

frequent and the most prosecuted form, other business practices that involve the giving of other amenities must be carefully scrutinized.[54]

"Perks," small benefits unconnected to any promise to act or refrain from acting, are not a violation of any general law, but are prohibited in the Purchasing Act of 1957 in those counties in which that Act has been adopted (T.C.A. § 5-14-114). However, as the difference between a perk and a bribe can be a subtle difference in intent, the clerk should be careful in accepting gifts or other benefits.

It is possible that gratuities or perks, such as free food, lodging, and transportation given to a county official by private parties with whom the official conducts county business, may be considered a bribe. The greater the value of the perk or gratuity, the more difficult it would be to overcome the public's idea that "you don't get something for nothing."

Bribery for Votes. The Constitution and statutes also prohibit offering bribes for votes.[55] It is unlawful for any candidate for the office of clerk to expend, pay, promise, loan or become liable in any way for money or any other thing of value, whether directly or indirectly, or to agree to enter into any contract with a person to vote for or support any particular policy or measure, in consideration of the vote or support, moral or financial, of that person (T.C.A. § 2-19-121). A violation of this statute, known as bargaining for votes, is a Class C misdemeanor (T.C.A. § 2-19-123). However, this does not render it illegal to make expenditures to employ clerks or stenographers in a campaign, for printing and advertising, actual travel expenses, or certain other allowed expenditures (T.C.A. § 2-19-124).

A stronger prohibition against bribing voters is found in a statute which makes it illegal for a person, whether directly or indirectly, either personally or through another person, to pay or give any thing of value to a voter to influence the person's vote (or failure to vote) in any election, primary or convention (T.C.A. § 2-19-126).

A violation of this statute is a Class C felony (T.C.A. § 2-19-128). Voters are also prohibited from accepting bribes (T.C.A. § 2-19-127), and the same penalty applies. Betting on elections also is prohibited (T.C.A § 2-19-129 through T.C.A. § 2-19-131).

Clerks' Oath. The clerks' oath states that the clerk will "execute the duties of the office without prejudice, partiality, or favor, to the best of the clerk's skill and ability; also, that the clerk has neither given nor will give to any person any gratuity, gift, fee, or reward in consideration of the clerk's support for the office, and that the clerk has neither sold nor offered to sell, nor will the clerk sell, the clerk's interest in the office." (T.C.A. § 18-1-103). Violation of the oath of office can result in removal from office (ouster) under the provisions of T.C.A. § 8-47-101 *et seq.*

Time and Use of Property Considerations

The clerk has an affirmative duty not to neglect the duties of the office (TENN. CONST., art. VII, § 1). Therefore, while outside activities are permissible, they can cause problems if taken to extremes. For example, a clerk could sell computers during non-working hours, but if a contract called for the clerk personally to train the purchaser's employees to use the new equipment during regular working hours over the first month of operation, a serious question of neglect of duty could arise. Similarly, a small use of the telephone for personal business should not cause any problem, but if the clerk were also, for example, a real estate broker, the clerk could not use the office in a dual capacity, official and private, without violating various duties and violating the prohibition against the use of public property for private purposes, which would be a form of official misconduct (T.C.A. § 39-16-402).

Criminal Offenses

In addition to the offenses discussed above, the clerk should be aware of certain provisions of the state criminal code which may affect the clerk's official duties. The statutes contained in T.C.A. § 39-16-101 *et seq*., which set out the offenses against the administration of government, are of primary interest to most public officials and employees. In addition to the provisions of the state criminal code, officials should be aware that there are a number of offenses that involve official misconduct, influence peddling, racketeering and wire and mail fraud that can serve as the basis for federal criminal prosecution.

Bribery Offenses. As discussed previously, the offense of bribery of a public servant is committed when a person offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion or other action in the public servant's official capacity. If a public servant solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be influenced, then the public servant has committed the offense as well. Bribery of a public servant is a Class C felony (T.C.A. § 39-16-102). Any executive, legislative or judicial officer convicted of bribery is forever disqualified from holding any office under the laws or constitution of this state (T.C.A. § 39-16-103). In addition to this bribery offense, there are several related bribery offenses which are discussed below.

> *Soliciting Unlawful Compensation*. A public servant who requests a pecuniary benefit for the performance of an official action knowing that he or she was required to perform that action without compensation or at a level of compensation lower than that requested has committed the offense of solicitation of unlawful compensation, a Class E felony (T.C.A. § 39-16-104).

Buying and Selling in Regard to Offices. This offense is committed when any person holding any office, or having been elected to any office, enters into any bargain and sale for any valuable consideration whatever in regard to the office, or sells, resigns, or vacates the office or refuses to qualify and enter upon the discharge of the duties of the office for pecuniary consideration. This offense is also committed when any person offers to buy any office by inducing the incumbent thereof to resign, to vacate, or not to qualify, or when a person directly or indirectly engages in corruptly procuring the resignation of any officer for any valuable consideration. This offense is a Class C felony. (T.C.A. § 39-16-105).

It is an exception to the offenses of bribery, solicitation, and buying and selling public office that the benefit involved is a fee prescribed by law to be received by a public servant or any other benefit to which the public servant was lawfully entitled, and it is a defense that the benefit was a trivial benefit incidental to personal, professional, or business contacts, which involves no substantial risk of undermining official impartiality, or a lawful contribution made for the political campaign of an elective public servant when the public servant is a candidate for nomination or election to public office (T.C.A. § 39-16-106).

Bribing a Witness. If a person offers, confers or agrees to confer anything of value upon a witness or a person the defendant believes will be called as a witness in any official proceeding, with intent to corruptly influence the testimony of the witness, induce the witness to avoid or attempt to avoid legal process summoning the witness to testify, or induce the witness to be absent from an official proceeding to which that witness has been legally summoned, then the person has committed the Class C felony offense of bribing a witness. If a witness or person who believes he or she will be called as a witness in any official proceeding solicits, accepts or agrees to accept anything of value upon an agreement or understanding that the witness's testimony will thereby be influenced, the witness will attempt to avoid legal process summoning the witness to testify, or the witness will attempt to be absent from an official proceeding to which the witness has been legally summoned, the witness has also committed a Class C felony. However, the statute does not prohibit the payment of additional compensation to expert witnesses. (T.C.A. § 39-16-107).

Bribing a Juror. "Juror" is defined to mean any person who is a member of any jury, including a grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury, and also includes any person who has been summoned or whose name has been drawn to attend as a prospective juror (T.C.A. § 39-16-101(1)). A person who offers, confers or agrees to confer any pecuniary benefit upon a juror with the intent that the juror's vote, opinion, decision or other action as a juror will thereby be corruptly influenced, or who solicits, accepts or agrees to accept any pecuniary benefit upon any agreement or understanding that the juror's vote, opinion, decision or other action as a juror will thereby be corruptly influenced, is guilty of the Class C felony of bribing a

juror (T.C.A. § 39-16-108).

Contraband in Penal Institutions. It is a Class C felony for any person to knowingly and unlawfully take, send or otherwise cause to be taken or have in his or her possession (without the express consent of the chief administrator of the institution) in any penal institution where prisoners are kept any weapons, ammunition, explosives, intoxicants, legend drugs, or controlled substances (T.C.A. § 39-16-201).

Criminal Impersonation. A person commits criminal impersonation who, with intent to injure or defraud another person, assumes a false identity, pretends to be a representative of some person or organization, pretends to be an officer or employee of the government, or pretends to have a handicap or disability (T.C.A. § 39-16-301). Criminal impersonation is a Class B misdemeanor. Impersonating a licensed professional constitutes a Class E felony(T.C.A. § 39-16-302). The use of a false identification to obtain goods, services or privileges to which the person would not otherwise be entitled is a Class C misdemeanor (T.C.A. § 39-16-303).

Misconduct Involving Public Officials and Employees. The criminal statutes relating to misconduct of public officials and employees are found in T.C.A. § 39-16-401 *et seq.* "Public servant" is broadly defined for these purposes as persons elected, selected, appointed, employed or otherwise designated as an officer, employee or agent of government; a juror or grand juror; an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; an attorney at law or notary public when participating or performing a governmental function; a candidate for nomination or election to public office; or a person who is performing a governmental function under claim of right although not legally qualified to do so (T.C.A. § 39-16-401(3)).

Official Misconduct. A public servant commits an offense who, with intent to obtain a benefit, or to harm another, intentionally or knowingly:

1. Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;

2. Commits an act under color of office or employment (acting or purporting to act in an official capacity or take advantage of such actual or purported capacity) that exceeds the servant's power;

3. Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the office or employment;

4. Violates a law relating to the servant's office or employment; or

5. Receives any benefit not otherwise provided by law.

It is a defense to prosecution that the benefit involved was a trivial benefit incidental to personal, professional, or business contact, and involved no substantial risk of undermining official impartiality. The offense of official misconduct is a Class E felony. (T.C.A. § 39-16-402).

Official Oppression. A public servant acting under color of office or employment (acting or purporting to act in an official capacity or taking advantage of actual or purported capacity) who intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, seizure, dispossession, assessment, or lien that the servant knows is unlawful, or intentionally denies or impedes another in the exercise of enjoyment of any right, privilege, power, or immunity, when the servant knows the conduct is unlawful, commits the Class E felony of official oppression (T.C.A. § 39-16-403).

Misuse of Official Information. The Class B misdemeanor of misuse of official information is committed by any public servant who, by reason of information to which the servant has access in the servant's official capacity and which has not been made public, attains, or aids another to attain, a benefit (T.C.A. § 39-16-404).

Persons convicted of official misconduct, official oppression or misuse of official information shall be removed from office or discharged from the position. A public servant elected or appointed for a specified term shall be suspended without pay beginning immediately upon conviction in the trial court and continuing through the final disposition of the case, removed from office for the remainder of the term during which the conviction occurred if the conviction becomes final, and barred from holding any appointed or elected office for ten years from the date the conviction becomes final. A public servant who serves at will shall be discharged upon conviction in the trial court. Subsequent public service shall rest upon the hiring or appointing authority provided that such authority has been fully informed of the conviction. (T.C.A. § 39-16-406).

Purchasing Property Sold Through Court. A judge, sheriff, court clerk, court officer, or employee of any court commits an offense who bids on or purchases, directly or indirectly, for personal reasons or for any other person, any kind of property sold through the court for which the judge, sheriff, court clerk, court officer, or employee discharges official duties. A bid or purchase in violation of this provision is voidable at the option of the person aggrieved. This offense is a Class C misdemeanor, with no incarceration permitted (T.C.A. § 39-16-405).

Interference with Governmental Operations. Under the umbrella of interference with governmental operations are the offenses of false reporting to law enforcement officers (T.C.A. § 39-16-502), and tampering with or fabricating evidence (T.C.A. § 39-16-503), both of which are illegal for all persons. Also, it is illegal for any person knowingly to make a false entry in, or false alteration of, a governmental record, or make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it will

be taken as a genuine governmental record, or intentionally and unlawfully to destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a governmental record. Destruction of or tampering with a governmental record is a Class A misdemeanor. Upon notification from any public official having custody of government records, including those created by municipal, county or state government agencies, that records have been unlawfully removed from a government records office, appropriate legal action may be taken by the city attorney, county attorney or attorney general to obtain a warrant for possession of any public records which have been unlawfully transferred or removed. Such records shall be returned to the office of origin immediately after safeguards are established to prevent further recurrence of unlawful transfer or removal (T.C.A. § 39-16-504).

Also included within offenses against the administration of government are the offenses which constitute interference with government operations, including coercion of witnesses (T.C.A. § 39-16-507), coercion of jurors (T.C.A. § 39-16-508), improper influence of a juror (T.C.A. § 39-16-509), retaliation against a juror (T.C.A. § 39-16-510), and compensation for past action of a juror (T.C.A. § 39-16-511; § 39-16-512).

The same broad definition of public servant applies to these offenses (T.C.A. § 39-16-501). As with other offenses, there may be a defense when the benefit is trivial (T.C.A. § 39-16-513). Finally, it is a Class A misdemeanor for any employer to dismiss any employee from employment because of jury service by the employee (T.C.A. § 39-16-514).

Retaliation for Past Action. A person who harms or threatens to harm a witness at an official proceeding, judge, clerk, juror, or former juror, commits the offense of retaliation, a Class E felony. The offense of retaliation does not apply to an employee of a clerk who harms or threatens to harm such clerk. (T.C.A. § 39-16-510)

Obstruction of Justice. Included within the obstruction of justice offenses are the offenses of resisting stop, frisk, halt, arrest or search (T.C.A. § 39-16-602), evading arrest (T.C.A. § 39-16-603), and accepting or soliciting a benefit for refraining, discontinuing or delaying assistance in the prosecution of an offense, or "compounding" (T.C.A. § 39-16-604). It is a defense to the offense of compounding when the benefit accepted by the victim did not exceed an amount reasonably believed by the victim to be restitution or indemnification for loss caused by the offense. The offenses related to escape are found in T.C.A. §§ 39-16-605 through § 39-16-608. It is an offense for any person to knowingly or intentionally permit or facilitate the escape of a person in custody (T.C.A. § 39-16-607), and it is unlawful for any person to provide an inmate with anything that may be useful for the inmate's escape with the intent to facilitate an escape (T.C.A. § 39-16-608). Failure to appear when lawfully issued a citation in lieu of arrest or when lawfully released conditioned on subsequent reappearance, or to knowingly go into hiding to avoid prosecution or court appearance, is unlawful under T.C.A. § 39-16-609.

Perjury Offenses. Perjury includes both the making of a false statement under oath and the making of a false statement, though not under oath, on an official document which is required or authorized to be under oath and states that a false statement is subject to the penalties of perjury (T.C.A.§39-16-702). Aggravated perjury is a statement which constitutes perjury and the statement could have affected the outcome of the proceeding (T.C.A. § 39-16-703). It is a defense to aggravated perjury that a retraction is made before the completion of the testimony at the proceeding during which the aggravated perjury was committed (T.C.A. § 39-16-704). Inducing another to commit perjury or aggravated perjury is also an offense (T.C.A. § 39-16-705). It is not a defense to perjury or aggravated perjury that there was an irregularity in the oath (T.C.A. § 39-16-706).

Penalties. The criminal code provides that violations which may be punished by one year or more of confinement or by death are felonies, and violations punishable by a fine or confinement for less than one year are misdemeanors (T.C.A. § 39-11-110). Felonies are classified as either A, B, C, D or E and misdemeanors are classified as A, B or C (T.C.A. § 40-35-110). Sentence ranges are assigned to each classification as follows (T.C.A. § 40-35-111 and § 40-35-112):

Felony	Years of Sentence
A	15 - 60
B	8 - 30
C	3 - 15
D	2 - 12
E	1 - 6

Misdemeanor	Years of Sentence
A	up to 11 months 29 days
B	up to six months
C	up to 30 days

The presumptive sentence for most felonies is the minimum in each range, but the judge may increase the sentence based on enhancing and mitigating factors. Sentencing considerations are codified in the Criminal Sentencing Reform Act of 1989 (T.C.A. § 40-35-101 *et seq.*). Offenses which are not classified and for which no penalty is specified are considered Class A misdemeanors (T.C.A. § 39-11-111 and T.C.A. § 39-11-114). Felonies for which no punishment is prescribed are considered Class E felonies (T.C.A. § 39-11-113).

Ouster

Article VII, Section 1 of the Tennessee Constitution provides that county officers, including the clerk, shall be removed from office for malfeasance or neglect of duty. The General Assembly has defined malfeasance, neglect of duty, and incompetency by

statute (T.C.A. § 8-47-101). County officeholders, including the clerk, may be ousted from office for:

1. Knowingly or willfully engaging in misconduct while in office;

2. Knowingly or willfully neglecting to perform duties required by law;

3. Being intoxicated in a public place;

4. Engaging in gambling; or

5. Committing any act violating any penal statute involving moral turpitude (T.C.A. § 8-47-101).

Decisions as to whether a crime involves moral turpitude must be made on a case-by-case basis. Generally, a crime involving moral turpitude involves a crime that reflects upon the moral fitness of a person, such as a crime involving dishonesty, murder, sale of drugs, prostitution, and possibly, any intentional and serious bodily harm to others. Many of the cases involving determinations of whether crimes are ones of moral turpitude are those involving fitness for the granting of a license, such as a beer permit. Generally, an official cannot be removed for a misdemeanor offense which does not involve moral turpitude, and not for a misdemeanor in office.

Ouster proceedings are civil proceedings and may be instituted by the attorney general, district attorney general, or county attorney, either upon their own initiative or after a complaint has been made (T.C.A. § 8-47-102). It is the duty of these persons to investigate all written complaints of misconduct by an official in their jurisdiction, and if the attorney decides that reasonable grounds for the complaint exist, to institute court proceedings to oust the official (T.C.A. § 8-47-103). The privilege against self-incrimination may not be used by an official against whom ouster proceedings have been brought (T.C.A. § 8-47-107).

Citizens also may file ouster proceedings. Ten citizens and freeholders are required to institute such proceedings, posting security for the costs of the lawsuit and, upon request by the citizens, the attorneys named above must provide assistance to these citizens. (T.C.A. §§ 8-47-110 and 8-47-111)

Upon a finding of good cause, an official may be suspended from office by the judge pending the final hearing of the case, and the vacancy thereby created is then filled as would be any other vacancy (T.C.A. §§ 8-47-116, 8-47-117). The person filling the vacancy receives the same salary and fees which would have been paid to the suspended official (T.C.A. § 8-47-121).

Either party to an ouster proceeding may appeal, but the appeal does not operate to suspend or to vacate the trial court's judgment or decree, which remains in force until

vacated, revised or modified (T.C.A. § 8-47-123). An official who successfully defends an ouster suit will be restored to office and will be allowed costs of the cause and the salary and fees of the office during the time of any suspension (T.C.A. § 8-47-121). Where the ouster is successful, however, full costs of the action will be adjudged against the ousted official (T.C.A. § 8-47-122).

A conflict of interest violation (T.C.A. § 12-4-101) can also result in a clerk's being ousted and found ineligible to hold office for ten years. In addition, a clerk who violates the laws regarding collection and disbursement of taxes is guilty of a Class C misdemeanor (T.C.A. § 67-1-1615). A clerk who fails to account for and pay over all taxes which the clerk is required to collect may be removed from office and may be liable for a penalty in the amount of 2% per month from the time taxes would have been paid, plus attorney's fees, and none of the amount due may be remitted after the matter is placed in the hands of a lawyer for collection (T.C.A. § 67-1-1616). Suits can be filed to collect the amounts due by the state, the county or a city according to the procedure established by statute which authorizes actions instituted by taxpayers in certain circumstances (T.C.A. § 67-1-1617 *et seq.*). Willful failure to pay into the state treasury the tax revenues collected on behalf of the state is a Class E felony (T.C.A. § 67-1-1625).

Liability Problems

Liability exposure, particularly personal liability exposure, and also (because of the rapid rise in the cost of insurance) county liability exposure, is one of the most important subjects for clerks to understand. Tort reform has been a popular topic in recent years, but non-tort liability can in many instances be more costly to clerks and to counties.

This chapter will discuss both tort and non-tort liability, including certain immunity provisions of law. Liability associated with personnel, one of the fastest growing areas of the law, will be mentioned only briefly.

What is a tort? A tort is a civil action based on a violation of a duty imposed by law. A tort can be the result of an intentional act or a negligent act. An action can be both a tort and a crime, as, for instance, an assault could result in both criminal liability and civil liability. The plaintiff who claims to have suffered a tort must show an act, intentional or negligent, which violates a duty imposed by law, generally the standard of care an ordinary person would exercise in the circumstances, and damages resulting from the breach of duty. The violation of duty can be through misfeasance (the improper doing of an act), or by nonfeasance (omitting to do an act).

Tennessee Governmental Tort Liability Act. Prior to 1973, Tennessee counties were subject to the state's sovereign immunity for governmental acts, but were liable for damages resulting from proprietary activities. Governmental acts were those activities that were peculiar to governments, or activities only governments could provide, such

as police protection, fire protection, education, or tax collection.

Proprietary activities were those that could be provided by private as well as governmental entities, such as water and sewer service, electrical services, and mass transit.

In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-101 *et seq.*), which provides that counties are immune under state law from all suits arising out of their activities, either governmental or proprietary, unless immunity is specifically removed by the law. It is important to remember that this immunity does not extend to liability under federal law.

In cases where the county is immune, county officials and employees may be individually liable, but only up to the liability limits established in the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-310(c)). When the case is one where the county can be liable, the official or employee is immune (T.C.A. § 29-20-310(b)). Willful, malicious, or criminal acts, or acts committed for personal gain, do not fall under the personal liability protective provisions of the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-310(c)) (nor do medical malpractice actions brought against a health care provider)(T.C.A. § 29-20-310(b)).

Members of all county boards, commissions, agencies, authorities, and other governing bodies created by public or private act, whether compensated or not, are absolutely immune from suit under state law arising from the conduct of the entity's affairs. This immunity is removed when the conduct is willful, wanton, or grossly negligent. (T.C.A. § 29-20-201(b)(2)).

Areas in which the Tennessee Governmental Tort Liability Act removes governmental immunity (*i.e.*, kinds of actions for which the county can be sued) are:

1. Claims arising from the negligent operation of motor vehicles;

2. Claims arising from negligently constructing or maintaining streets, alleys or sidewalks;

3. Claims arising from the negligent construction or maintenance of public improvements; and

4. Claims arising from the negligence of county employees (T.C.A. § 29-20-202 through § 29-20-205).

There are exceptions to these areas where immunity is removed. These activities, for which the county is immune under state law, but for which the clerk or an employee may be liable, include claims arising from:

1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

2. False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy, or civil rights;

3. Issuing, denying, suspending, or revoking, or the failure to refuse to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;

4. Failing to inspect or negligently inspecting any property;

5. Instituting or prosecuting any judicial or administrative proceeding;

6. Negligent or intentional misrepresentation;

7. Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or

8. Assessing, levying or collecting taxes (T.C.A. § 29-20-205).

Persons other than elected or appointed officials and members of boards, agencies and commissions are not considered county employees for purposes of the Governmental Tort Liability Act unless the court specifically finds that all of the following elements exist:

1. The county selected and engaged the person in question to perform services;

2. The county is liable for the compensation for the performance of such services and the person receives all compensation directly from the county's payroll department;

3. The person receives the same benefits as all other county employees, including retirement benefits and eligibility to participate in insurance programs;

4. The person acts under the control and direction of the county not only as to the result to be accomplished but as to the means and details by which the result is accomplished; and

5. The person is entitled to the same job protection system and rules,

such as civil service or grievance procedures, as other county employees (T.C.A. § 29-20-107).

A regular member of the county voluntary or auxiliary firefighting, police or emergency assistance organization is considered to be a county employee without regard to the elements listed above (T.C.A. § 29-20-107(d)). The county cannot extend immunity to independent contractors or other persons or entities by contract (T.C.A. § 29-20-107(c)).

The county may now insure, either by self-insurance or purchasing insurance, or indemnify (up to the new limits set in the Tennessee Governmental Tort Liability Act) its employees and officials, including clerks and clerks' employees, for their liability exposure under the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-310(d)). The issue as to whether the clerk may purchase liability insurance as an expense of the office for clerks operating out of the fees of the office needs to be addressed by legislation.

The current liability limits under the Tennessee Governmental Tort Liability Act (T.C.A. § 29-20-403) are as follows:

Type of Claim	**Limit**
Bodily injury or death of any one person in any one accident, occurrence or act	$130,000
Bodily injury or death of all persons in any one accident, occurrence or act	$350,000
Injury to or destruction of property of others in any one accident	$ 50,000

It is very important to know that these limits do not apply to federal civil rights actions in state or federal courts.

Actions under the Governmental Tort Liability Act must be commenced within 12 months after the cause of action arises (T.C.A. § 29-20-305(b)), like other tort claims. This one year statute of limitations can be extended when claims involve persons under legal disabilities (incompetents, minors, etc.) or when the injured party has reasonably failed to discover the existence of his or her cause of action against the county, county officials, or employees.

Liability for Personnel Matters. The clerk has general authority over the personnel in the clerk's office. Important employment law considerations include hiring, compensation, benefits, termination, retirement, the federal Fair Labor Standards Act ("FLSA"), right-to-know statutes, reserve service, jury service, the Occupational Safety and Health Act, the Equal Pay Act, the Immigration Control Act, the insurance

provisions of the Consolidated Omnibus Budget Reduction Act ("COBRA"), FICA and FIT withholdings, the Family and Medical Leave Act ("FMLA"), and the Americans with Disabilities Act.

As an employer, the clerk must refrain from retaliating or firing based on the employee's exercise of a protected constitutional right (*e.g.*, freedom of speech), or a statutory right (*e.g.*, filing a workers' compensation claim). Discrimination must be avoided in every aspect of employment. Under state and federal law, an employer cannot discriminate against an employee or a potential employee based upon race, color, sex, religion, national origin, age or disability (including infectious, contagious or similarly transmittable diseases). Further, any form of sexual harassment is illegal. An individual may file a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC") or the Tennessee Human Rights Commission ("THRC"). An individual may also request guidance from the Administrative Office of the Courts as to procedures for filing a claim regarding sexual harassment.

An employer cannot fire an employee solely for: (1) refusing to participate in or remaining silent about illegal activities; or (2) using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise prohibited by law (*i.e.*, smoking) if the employee follows the employer's guidelines regarding the use of the product while at work (T.C.A. § 50-1-304).

Finally, the First Amendment to the United States Constitution prohibits patronage dismissals of certain types of governmental employees.[55] Patronage dismissals are those based upon political activity or affiliation.

Non-Tort Liability. The Tennessee Governmental Tort Liability Act does not apply to many types of actions filed in both state and federal courts. In state court, for example, compensation, breach of contract, inverse condemnation, and many other types of common law and statutory causes of action can be the basis of a non-tort action. The limits of the Tennessee Governmental Tort Liability Act do not apply to these non-tort actions.

> *Breach of Contract*. Counties are responsible for the breach of a contract entered into by the county. The extent of liability in such a contract action depends upon the terms of the contract and the damages suffered by the parties. The county could be required by the courts to perform a contract according to its terms in an action for specific performance.
>
> When an official attempts to enter into a contract on behalf of the county without actual authority to enter into such a contract, the official may then be held personally liable for the performance of the contract.
>
> *Other Actions*. There are numerous areas, including search and seizure, voting

rights, improper arrest, discriminatory enforcement of statutes, and the use of unlawful force, which may result in lawsuits against the county based on the actions of law enforcement and other court personnel. These claims can result in lawsuits in federal court under the federal civil rights act (42 U.S.C. § 1983) or in state court under the same federal statutes or as common law actions.[56] A negligent action, unless it rises to the level of gross negligence, will not give rise to an action under § 1983.[57]

The federal antitrust laws (15 U.S.C. § 1 *et seq.*) provide that counties will not be held responsible for damages in antitrust actions, but the county can still be enjoined from doing, or mandated to do, certain acts. In general, county officials must take care in actions which restrict competition, such as granting of exclusive franchises, referring the public to particular attorneys or lending institutions, or giving different persons different access to records.

There is an extensive framework of other laws, both state and federal, applicable to counties. Consult your county attorney when you are uncertain about the legal implications of any action you are preparing to take.

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[51] *Op. Tenn. Atty. Gen. dated July 15, 1983.*

[52] *Op. Tenn. Atty. Gen. 84-067 (February 16, 1984).*

[53] *Op. Tenn. Atty. Gen. 85 (November 1,1979).*

[54] *"Gratuities May Cause Severe Implications for County Officials", Tennessee County News, March-April, 1982.*

[55] *Clariday v. State of Tennessee, 552 S.W.2d 759 (1976); State v. Prybil, 211 N.W.2d 308 (Iowa 1973).*

[55] *See Rutan v. Republican Party of Illinois, 497 U.S. 62, 64 (1990).*

[56] *Poling v. Goins, 713 S.W.2d 305 (Tenn. 1986).*

[57] *Daniels v. Williams, 106 S.Ct. 662 (January 21, 1986); Nishiyama v. Dickson County, Tennessee, 814 F.2d 2*

CODE OF JUDICIAL CONDUCT

Judges are important public officials whose authority reaches every corner of society. Judges resolve disputes, defining our rights and responsibilities, determining the distribution of vast amounts of public and private resources, and directing the actions of officials in other branches of government. Judges exercise broad control over many things in both public and private life. Nearly every facet of life is affected by judicial decisions.

Because they are so important to our society, judges must be competent and ethical. Judges are expected to conduct themselves according to high standards of professional conduct, exercising their judicial functions with integrity, impartiality and independence.

Code of Conduct. Nearly every state has adopted rules of judicial conduct which are similar to the Model Code of Judicial Conduct as promulgated by the American Bar Association. The Model Code includes provisions that govern conduct both on and off the bench. In general, the Code provides that judges should uphold the integrity and independence of the judiciary, should avoid impropriety and the appearance of impropriety in all of their activities and should perform the duties of the office impartially and diligently.

To Whom the Code Applies. The Code of Judicial Conduct provides the code applies to anyone acting in a judicial capacity -this includes special masters, judicial commissioners and magistrates. The rules of compliance exempt part time judges from sections that proscribe certain financial activities, arbitration, the practice of law and certain extra judicial appointments and reporting activities.

Advisory Opinions. Judges may request and obtain advisory opinions construing the Code of Judicial Conduct. Such opinions must be requested by a judge and must not be the subject of any pending litigation or hearing at the time they are requested. The opinions provide guidelines as to ethical conduct.

Personnel Management and Delegation of Authority. Canon 3C(2) imposes on a judge the duty to require of the judge's staff and court officials subject to his direction and control the same standard of administrative diligence that applies to the judge. Disciplinary cases holding judges accountable for staff deficiencies may generally be grouped into four categories:

(1) misuse of staff;
(2) improper delegation of judicial responsibilities to staff;
(3) undersupervision of staff; and
(4) oversupervision of staff

Judges have been disciplined for directing staff members to neglect their judicial system duties to work on projects that accrued to the judge's financial benefit or political benefit.

A judge may also misuse his or her staff by directing them to perform their court related duties in an improper manner. Judges have also been disciplined for delegating judicial responsibilities to unauthorized court personnel. Such unauthorized delegations have included allowing court staff to sign the judge's name to warrants, perform marriages, reduce traffic tickets, set bonds, grant continuances and grant limited driving privileges. Judges have also been disciplined for failing to instruct court personnel on administrative procedures for ensuring that probate matters did not become delinquent and for failing to instruct court staff on proper record keeping and financial accounting procedures.

Ex Parte Communication. The commentary to the Code explains that the rule against exparte communication does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his or her adjudicative responsibilities. Thus, judges may speak freely with their law clerks, secretaries and colleagues on multi-judge courts. Judicial assistants, including court clerks, must guard against becoming involved in unauthorized communication with persons involved in the court system.

Following is a listing of the judicial canons comprising the Code of Judicial Conduct for Tennessee as set out in Rule 10 of the Rules of the Tennessee Supreme Court.

CANON 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

CANON 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

CANON 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

CANON 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations.

CANON 5. A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.

Further information regarding the canons and their application may be obtained by reviewing Supreme Court Rule 10.

AJS MODEL CODE OF CONDUCT FOR NONJUDICIAL COURT EMPLOYEES

The American Judicature Society has authored a model code of conduct for nonjudicial court employees. It is our understanding many states have adopted this model code or a revised version in order to provide guidance to court personnel. Although this code has not been adopted by Tennessee at this time, it is provided herein for your review.

INTRODUCTION. The holding of public employment in the court system is a public trust justified by the confidence that the citizenry reposes in the integrity of officers and employees of the judicial branch. A court employee, faithful to that trust, therefore shall observe high standards of conduct so that the integrity and independence of the courts may be preserved. Court employees shall carry out all duties assigned by law and shall put loyalty to the principals embodied in this Code above loyalty to persons or parties. A court employee shall uphold the Constitution, laws and legal regulations of the United States, the State of Tennessee and all governments therein, and never be a party to their evasion. A court employee shall abide by the standards set out in this Code and shall endeavor to expose violations of this Code wherever they may appear to exist.

Scope

1) Each jurisdiction must determine exactly which employees shall be covered by this code. The Code should apply to all employees who directly or indirectly affect the court's operation. A suggested listing of such employees would include: court clerks, docket clerks, data processing personnel, bailiffs and judicial secretaries, as well as court managers and their staffs. This list is intended to be illustrative and does not imply that other employees should be omitted. For example, if janitors in the court building have contact with the public or have the authority to purchase supplies for the court, then the Code should apply to these employees as well.

2) This Code is not intended to apply to law clerks, who should be held to a higher standard of conduct, nor to court reporters, who are bound by the *Code of Professional Conduct of the National Shorthand Reporters Association.*

3) The term, "court employee," includes within its scope those court employees who are also court managers.

4) The term, "court manager," includes within its scope all court employee who have important supervisory responsibilities. Each jurisdiction must identify the particular court employees who function as managers within that court system.

Section One: Abuse of Position

A) No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.

B) No employee shall accept, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any employee would be influenced thereby. Gifts that do not violate this prohibition against abuse of position are further regulated in Section Three, Subsection B.6.

C) No employee shall discriminate by dispensing special favors to anyone, whether or not for remuneration, nor shall any employee so act that the employee is unduly affected or appears to be affected by kinship, rank, position, or influence of any party or person.

D) No employee shall request or accept any fee or compensation, beyond that received by the employee in his or her official capacity, for advise or assistance given in the course of his or her public employment.

E) Each employee shall use the resources, property and funds under the employee's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.

F) Each employee shall immediately report to the appropriate authority any attempt to induce him or her to violate any of the standards set out above.

Section Two: Confidentiality

A) No court employee shall disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or acquired through unauthorized disclosure by another.

B) Confidential information includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning the work product of any judge, law clerk, staff attorney, or other employee including, but not limited to, notes, papers, discussions and memoranda.

C) Confidential information that is available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by persons authorized to do so.

D) Every court employee shall report confidential information to the appropriate authority when the employee reasonably believes this information is or may be evidence of a violation of law or of unethical conduct. No court employee shall be disciplined for disclosing such confidential information to an appropriate authority.

E) Court managers should educate court employees about what information is confidential and, where appropriate, should designate materials as confidential.

F) Court employees are not precluded from responding to inquiries concerning court procedures, but a court employee shall not give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court employee designated for that purpose.

G) No court employee shall either initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges, jury members or any other person.

H) A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality.

Section Three: Conflict of Interest

A) Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. Even though no misuse of office is involved, such a conflict of interest involving a court employee can seriously undermine the community's confidence and trust in the court system. Therefore, every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and enduring them when they arise.

1) A conflict of interest exists when the court employee's objective ability or independence of judgment in the performance of his or her job is impaired or may reasonably appear to be impaired or when the court employee, or the employee's immediate family, as defined below, or business would derive financial gain as a result of the employee's position within the court system.

2) No conflict of interest exists if any benefit or detriment accrues to the employee as a member of a profession, business or group to the same extent as any other member of the profession, business or group who does not hold a position within the court system.

3) For the purposes of this Code, "immediate family" shall include the following, whether related by marriage, blood, or adoption: spouse; dependent children; brother; sister; parent; grandparent; grandchildren; father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepfather; stepmother, stepson, stepdaughter, stepbrother, stepsister; half-brother, half-sister.

B) Prohibited Activities:

1) No court employee shall enter into any contract with the court system for services, supplies, equipment, leases or realty, apart from the employment contract relating to the employee's position, nor use that position to assist any member of his or her immediate family in securing a contract with the court system in a manner not available to any other interested party.

2) No court employee shall receive tips or other compensation for representing, assisting or consulting with parties engaged in transactions or involved in proceedings with the court system.

3) No court employee shall participate in any business decision involving a party with whom either the court employee or any member of the employee's immediate family is negotiating for future employment.

4) No former court employee shall engage in transactions or represent others in transactions or proceedings with the court system for one year after termination of employment in any matter in which the former employee was substantially involved or in any dealings with offices or positions that the former employee once held.

5) No court employee shall knowingly employ, advocate or recommend for employment any member of his or her immediate family.

6) No court employee shall solicit, accept or agree to accept any gifts, loan, gratuities, discounts, favors, hospitality or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties.

    a) Nothing in this section shall prohibit an employee from accepting a public award presented in recognition of public service.

    b) Nothing in this section shall prohibit an employee from receiving a commercially reasonable loan made as part of the ordinary transaction of the lender's business.

    c) Nothing in this section shall prohibit any person from donating a gift to a group of employees, e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or

that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly report the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with the understanding that they will influence employees' official actions, decisions or judgments are prohibited as abuse of office in Section One, Subsection B.

d) Nothing in this section shall prohibit any person or group from donating a gift of historical or other significant value that is given for the benefit of the court system, provided that such as gift is received on behalf of the court system by the appropriate designated authority.

C) To secure conformity to the above standards, every court employee who has authority to enter into or approve contracts in the name of the court system shall file a financial disclosure statement with the appropriate designated authority upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of and contractual arrangements for personal income, including investments and real property, business entity income and business position income held or received by themselves, their spouses or their dependent children, and shall follow the guidelines established by the appropriate designated authority.

D) Each full-time court employee's position with the court system must be the employee's primary employment. Outside employment is permissible only if it complies with all the following criteria:

1) The outside employment is not with an entity that regularly appears in court or conducts business with the court system, and it does not require the court employee to have frequent contact with attorneys who regularly appear in the court system; and

2) The outside employment is capable of being fulfilled outside of normal working hours and is not incompatible with the performance of the court employee's duties and responsibilities; and

3) The outside employment does not require the practice of law; and

4) The outside employment does not require or induce the court employee to disclose confidential information acquired in the course of and by reason of official duties; and

5) The outside employment shall not be within the judicial, executive or legislative branch of government without written consent of both employers; and

6) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.

Section Four: Political Activity

A) Each employee retains the right to vote as the employee chooses and is free to participate actively in political campaigns during the non-working hours. Such activity includes, but is not limited to, membership and holding office in a political party, campaigning for a candidate in a partisan election by making speeches and making contributions of time or money to individual candidates, political parties or other groups engaged in political activity. An employee who chooses to participate in political activity during off-duty hours shall not use his or her position or title within the court system in connection with such political activities.

B) With the exception of officers of the court who obtain their position by means of election, no employee shall be a candidate for or hold partisan elective office. With the same exception, an employee who declares an intention to run for partisan elective office shall take an unpaid leave of absence upon the filing of nomination papers. If elected, he or she shall resign. An employee may be a candidate for non-partisan office without separating from employment, provided that the employee complies with the requirements of this Code concerning performance of duties, conflict of interest, etc.

C) No employee shall engage in any political activity during scheduled work hours, or when using government vehicles or equipment, or on court property. Political activity includes, but is not limited to:

1) Displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, committee agency or candidate for political office;

2) Using official authority or position, directly or indirectly, to influence or attempt to influence any other employee in the court system to become a member of any political organization or take part in any political activity.

3) Soliciting signatures for political activity;

4) Soliciting or receiving funds for political purposes.

D) No employee shall discriminate in favor of or against any employee or applicant for employment on account of political contributions or permitted activities.

Section Five: Performance of Duties

A) Every court employee shall endeavor at all times to perform official duties properly and with diligence. Every court employee shall apply full-time energy to the business and responsibilities of the employee's office during work hours.

B) Every court employee shall carry out responsibilities as a servant of the public in as courteous a manner as possible.

C) Every court employee shall maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule.

D) No court employee shall alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee's control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.

E) No court employee shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.

F) No court employee shall give legal advice or recommend the names of private attorneys.

G) No court employee shall refuse to enforce or otherwise carry out any properly issued rule or order of court, nor shall court employees exceed that authority. No court employee shall be required to perform any duties outside the scope of the assigned job description.

H) Every court employee shall immediately report violations of this Code to the appropriate designated authority.

I) Court employees who are law students, attorneys or members of other professional groups are also bound by the appropriate professional duties of those roles.

Section Six: Court Managers

A) Court managers regularly shall update their education.

B) Court managers shall require employees subject to their direction and control to observe the ethical standards set out in this Code.

C) Court managers shall diligently discharge their administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of other court employees.

D) Court managers shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.

E) Court managers shall not act as leaders in or hold office in any political organization, make speeches for any political organization or publicly endorse a candidate for political office.

V. Education and Assistance (Where to Find Help)

CHAPTER CONTENTS

COUNTY OFFICIALS ASSOCIATION OF TENNESSEE

COAT is the statewide association for county officials. Founded in 1968, the association has four affiliate organizations:

- County Clerks Association of Tennessee
- State Court Clerks Association of Tennessee
- Tennessee Registers Association
- Tennessee Trustees Association

COAT, a nonprofit association, is primarily funded by membership dues and also raises revenue by having vendor shows, advertising in the newsletter and other activities. Nondues revenues are used for lobbying activities which are prohibited by law from being funded by dues.

COAT activities also include: Publication of a Quarterly Newsletter, Conferences, Advocacy for County Officials, Legislative Monitoring, Intergovernmental Liaison, and COAT office.

For more information, please contact:

Marie Allen Murphy
Executive Director
County Officials Association of Tennessee
226 Capitol Blvd., Suite 306
Nashville, Tennessee 37219
(615) 256-8552
FAX (615) 256-8014
www.tncoat.org

COUNTY TECHNICAL ASSISTANCE SERVICE

The County Technical Assistance Service was created by the Tennessee General Assembly in 1973 at the urging of county officials and their organization, the Tennessee County Services Association (TCSA), who wanted an agency to provide prompt, accurate technical assistance on a daily basis to Tennessee's 95 counties. The authorizing legislation, TCA § 49-9-402, established CTAS as a part of the University of Tennessee's Institute for Public Service. The law directs CTAS to "..provide studies and research in county government, publications, educational conferences and attendance at such conferences, and to furnish technical, consultative and field services to counties of the state in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to county government."

Every day, thousands of public servants across Tennessee tackle the challenge known as local government with guidance from the University of Tennessee's County Technical Assistance Service. Since its creation, CTAS has been the primary technical assistance service group for the state's 95 counties. Its mission is *"...to promote better county government through the provision of direct assistance to county officials in developing and implementing ideas and methods for improving service to citizens within the legal framework of the Tennessee Constitution and laws enacted by the Tennessee General Assembly."*

CTAS' most valuable resource is the staff and the local government experience each member brings to the job. CTAS staff members deliver prompt, accurate assistance with critical county government operations through personal contact, correspondence, telephone calls, publications and workshops. What officials get from CTAS is a personal contact or a printed resource for virtually every aspect of county government. Major areas of staff expertise include:

- *legal issues*
- *financial management, budgeting, accounting*
- *modernization of county government*
- *general county government functions*
- *highway & bridge maintenance*
- *human resources*
- *technology/telecommunications*
- *planning*
- *criminal justice*
- *computerization & information systems*
- *environmental issues*
- *publications/communications*
- *intergovernmental issues*
- *public policy issues*
- *court procedures*
- *geographic information systems*

Eight county government consultants are county officials' day-to-day connection with CTAS. While these consultants have specialty backgrounds, they are generalists and work within a geographical area. Two solid waste management consultants serve county officials' needs in East and West Tennessee regional offices. The remaining members of the CTAS professional staff work primarily out of the Nashville central office.

Publications - One of the most valuable tools for decision makers is readily accessible, authoritative information. CTAS is an information clearinghouse on every facet of county government. Publications include: Directory of Tennessee County Officials; Tennessee County Government Handbook; Tennessee Tax Statistics Report; County Revenue Manual; County Property Tax Manual; Records Management for County Governments; County Highway Departments in Tennessee; Personnel Policies and the Fair Labor Standards Act; and The Family Medical Leave Act: A Guide for Local Governments.

CTAS offices are located in the following cities:

Nashville:	(615) 532-3555/FAX (615) 532-3699
Johnson City:	(423) 282-4141
Knoxville:	(865) 974-3018
Chattanooga:	(423) 755-5319
Cookeville:	(931) 525-3535
Jackson:	(901) 423-3710
Martin:	(901) 587-7055

The CTAS Web Site can be accessed at: http://www.ctas.utk.edu/

The CTAS website contains information about the agency, its mission, its staff, CTAS regional offices, links of interest to local governments, and the CTAS Resource Center.

The CTAS Resource Center webpage contains searchable and downloadable versions of most agency's publications, as well as a Directory of Tennessee County Officials, compilations of the Private Acts for counties, annual Indexes of Acts Related to County Government, sample resolutions for use by the county legislative body, Executive Director's Spotlights on various current topics, data and statistics on local and state revenue, and a calendar of important county government dates.

THE UNIVERSITY OF TENNESSEE

CENTER FOR GOVERNMENT TRAINING

An agency of the Institute for Public Service

Ron Gibson, Executive Director

We promote better government through our partnerships and innovative leadership and development services that ultimately benefit citizens.

✓ *Continuing education is a hallmark of an effective government.*

✓ *Government leaders and managers need the latest information and best tools to meet today's challenges.*

✓ *Training and organizational development are the cornerstones of successful government organizations.*

The Center for Government Training (CGT) is The University of Tennessee's training and leadership development agency for state and local government officials and managers. For more than three decades, CGT has promoted effective government by providing educational programs that foster creative leadership, managerial effectiveness, professional skills enhancement, and lifelong development for individuals and their organizations.

Since it was established in 1967, CGT has custom-designed programs to help Tennessee's government professionals meet the challenges of public service. These programs address key issues in public management; organizational strategy; human resources; operations; policy development, design and analysis; negotiations; public relations; ethics; and leadership.

CGT's original mandate was to design, develop, and offer training and career development programs for state, municipal and county government officials and employees. More recent legislative actions charge CGT with operating an in-service program for local government officials (TCA 67-3-905); and delivering a specific training program for county officials (TCA 49-9-401 (b) (4) and TCA 5-1-301 through 309).

The Center for Government Training's primary goals include: designing and delivering leadership programs and institutes that meet the needs of Tennessee's elected policy makers; assisting city and county legislative bodies in their strategic planning; implementing comprehensive customer-driven needs assessments; and evaluating progress and measuring impact for its customers. CGT maintains on-staff expertise in leadership and management program development and training and has the ability to respond quickly to its customers' evolving needs.

The Center for Government Training annually provides more than 500 training services for more than 16,000 government officials and employees.

C O C T P

County Officials Certificate Training Program

For more information about the Center for Government Training

visit our web site at

www.cgt.utk.edu

or write or call

East Tennessee Office

105 Student Services Building
Knoxville, Tennessee 37996
Phone: (865) 974-9610
Fax: (865) 974-1528

Middle Tennessee Office

1720 West End Avenue, Suite 400
Nashville, Tennessee 37203
Phone: (615) 320-4970
Fax: (615) 340-0754

West Tennessee Office

605 Airways Boulevard, Suite 109
Jackson, Tennessee 38301
Phone: (901) 423-3710
Fax: (901) 425-4771

NATIONAL CENTER FOR STATE COURTS

The National Center for State Courts (NCSC) is a nonprofit organization serving the needs of justice in the nation's state and local courts. NCSC was founded in 1971 by U.S. Chief Justice Warren E. Burger and other judicial leaders who saw the need for a central resource for the nation's state, local and territorial courts. Today, NCSC meets that need in five ways:

(1) direct technical assistance and consulting services;
(2) research and technology;
(3) information, education, and association management;
(4) government relations; and
(5) international exchange and cooperation.

NCSC's Institute for Court Management (ICM) provides information, education, and association management services for court leaders. Educational programs provide training and continuing education in judicial administration for judges and court administrators. The NCSC library houses the world's largest collection pertaining to judicial administration, with more than 30,000 cataloged items. Association management services also provides staff support to eleven national judicial associations.

Addresses:

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
(P.O. Box 8798, Williamsburg, VA 23187-8798)
(800) 877-1233 fax: (757) 220-0449

Court Services Division
1331 Seventeenth Street, Suite 402
Denver, CO 80202-1554
(800) 466-3063 fax: (303) 296-9007

National Center for State Courts
2425 Wilson Blvd., Suite 350
Arlington, VA 22201
(703) 841-0200 fax: (703) 841-0206

www.ncsc.dni.us

COUNTY ATTORNEYS

In most counties there will be some form of legal representation provided to county officials. Legal counsels may be provided by a full or pat-time county attorney, law directors or through the District Attorney General's office. Clerks should use these resources when confronted with legal questions about their responsibilities and duties.

As a practical tip, we offer the following important guideline: Important, if not all legal advice, should be reduced to written form for the benefit of all involved.