



GENERAL MANUAL FOR CLERKS OF COURTS

Prepared by TENNESSEE
CLERKS OF COURT

2023

PREFACE

This manual has been produced to assist all Court Clerks in the service to the citizens of Tennessee and should be considered a tool to guide a clerk. While the manual is meant to be comprehensive, it was designed to provide basic information that would enable court clerks to provide their constituents with valuable public service. Clerks are also urged to use alternative resources to supplement the data in the manual. Some information contained in this manual is not the original work of the manual committee, but in an effort to provide as much information as possible, some individual guides contain information taken from previous presentations to the Tennessee State Court Clerks membership or was found by the committee on the internet in an attempt to provide the most up to date information for clerks. However, there may be oversights or omissions. If you find something incorrect or missing, please bring this to the Manual Committee of the Tennessee State Court Clerk's Conference.

Many years ago, there was a multiple volume clerk's manual that was distributed, but there is little information about this publication. This is the fourth major update to the more recent manual. The first publication was in 1996, again in 1998 with the last major update in 2001. A probate guide was distributed in 2012 and several subject or topical guides, with the exception of a criminal guide, were distributed in 2016. It is the desire of the manual committee to provide the most current information available to all court clerks including, but not limited to, legislative changes. Sources change and human error can occur in obtaining information, so please treat this manual as a tool to guide you in the right direction and not as the one and only resource. Also, information may be found in more than one location in this publication and hopefully, the different pieces of information do not contradict each other.

Please be mindful that some legislative changes occur annually and a court clerk should make a note of those changes until a newer version of the manual is produced. It is the desire of the manual committee to have the complete manual available online at the Administrative Office of the Courts and the County Officials Association of Tennessee's websites.

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

As Chairman of the Committee, I am exceedingly grateful and want to extend my thanks to all the manual committee members who assisted in this endeavor as well as other individuals that the committee had to call upon.

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TOPICAL SUMMARY

I. **Description of the Office**

II. **Overview of Court System**

III. **Duties**

IV. **Ethics, Ouster and Liability**

V. **Other**

VI. **Guides**

Adoptions

Appellate

Audit

Child Support

Civil

Conservatorship/Guardianship

Criminal

Delinquent Taxes

General Sessions

Jury

Juvenile

Miscellaneous (General, 1099, Cyber Security and Unclaimed Property)

Orders of Protection

Probate

Records Management

Special Commissioner/Master

VII. **Resources**

VIII. **Forms**

IX. **Glossary of Terms**

GENERAL MANUAL FOR CLERKS OF COURTS

TABLE OF CONTENTS

I.	DESCRIPTION OF THE OFFICE.....	1
	Legal Qualifications of Clerks of Courts.....	2
	Residence.....	2
	General Qualifications.....	3
	Method of Election or Appointment and Term of Office.....	4
	Appointed Clerks	4
	Elected Clerks	4
	Oath of Office	4
	Bond Requirements	5
	Amount of Official Bond	5
	Form of Official Bond	5
	Entry and Filing of Bonds	6
	Filing of Official Bonds	6
	Cost of Bonds.....	6
	Special Bonds.....	6
	Compensation of Clerks of Courts.....	6
	Fee System or Salary System.....	7
	Fee Office.....	7
	Deputies and Assistants.....	7
	Certified Public Administrator – Education Incentive Payments.....	9
	Vacancies.....	9
	Causes of Vacancies.....	9
	Procedure for the County Legislative Body to Fill a Vacancy.....	10
	Temporary Vacancies	10
	Temporary Absence of Clerks of Courts.....	11
	Election of a Successor by the People	11
	Successor's Rights.....	11
	Qualifying Deadlines	11
	Disclosures and Election to Office.....	11
	Campaign Financial Disclosure Act of 1980	11
	Financial Conflict of Interests Disclosures	11
II.	OVERVIEW OF COURTS	13
	Chart of Tennessee Judicial System	14
	Map of TN Judicial Districts	15
	Tennessee Judicial Districts	16

<i>Chart of Court Clerks of the Tennessee Judicial System</i>	17
<i>Tennessee Courts</i>	18
<i>The Tennessee Supreme Court</i>	18
<i>Court of Appeals and Court of Criminal Appeals</i>	18
<i>Court of Appeals</i>	18
<i>Court of Criminal Appeals</i>	18
<i>Office of Appellate Court Clerk</i>	19
<i>State Trial Courts</i>	19
<i>General Sessions and Other Courts of Limited Jurisdiction</i>	19
<i>General Sessions Court</i>	19
<i>Juvenile Courts</i>	20
<i>Probate Courts</i>	20
<i>Appeal from General Sessions Court to a Court of Record</i>	20
<i>Administrative Office of the Courts</i>	21
<i>Court of the Judiciary</i>	22
 III. DUTIES	23
<i>Powers</i>	24
<i>General Overview of Duties</i>	24
 IV. ETHICS, OUSTER AND LIABILITY	27
<i>Financial Conflicts of Interest</i>	28
<i>Other Statutory Conflict of Interest Provisions</i>	29
<i>Conflicts of Interest Based on Offices or Employment</i>	30
<i>Perks and Bribes</i>	31
<i>Bribery</i>	31
<i>Bribery for Votes</i>	31
<i>Clerks' Oath</i>	32
<i>Time and Use of Property Considerations</i>	32
<i>Criminal Offenses</i>	32
<i>Bribery Offenses</i>	32
<i>Contraband in Penal Institutions</i>	34
<i>Criminal Impersonation</i>	34
<i>Misconduct Involving Public Officials and Employees</i>	34
<i>Interference with Governmental Operations</i>	35
<i>Retaliation for Past Action</i>	36
<i>Obstruction of Justice</i>	36
<i>Perjury Offenses</i>	36
<i>Penalties</i>	37
<i>Ouster</i>	37
<i>Liability Problems</i>	39
<i>Tennessee Governmental Tort Liability Act</i>	39
<i>Liability for Personnel Matters</i>	42
<i>Non-Tort Liability</i>	42
<i>AJS Model Code of Conduct for Nonjudicial Court Employees</i>	44

Introduction.....	44
Scope	44
Section One: Abuse of Position.....	44
Section Two: Confidentiality	45
Section Three: Conflict of Interest.....	46
Prohibited Activities	46
Section Four: Political Activity.....	48
Section Five: Performance of Duties	49
Section Six: Court Managers.....	50
V. GUIDES.....	51
Adoption.....	52
Appellate.....	63
Audit.....	88
Child Support.....	107
Civil Actions.....	116
Conservatorship/Guardianship.....	125
Criminal	164
Delinquent Taxes.....	183
General Sessions.....	217
Jury.....	222
Juvenile.....	242
Miscellaneous.....	260
General.....	261
Acronyms.....	262
1099's.....	264
Cybersecurity.....	266
Unclaimed Property – Reporting Instructions.....	276
Orders of Protection.....	296
Probate.....	305
Records Management.....	366
Special Master/Commissioner/Receiver.....	415
VI. RESOURCES.....	417
AOC Contacts.....	420
Staff Directory.....	421
Tennessee Clerks of Court Conference.....	426
Judicial Boards, Commissions and Committees.....	428
County Technical Assistance Service – Training Resources.....	432
VII. OTHER FORMS.....	438
VIII. GLOSSARY.....	455

I. DESCRIPTION OF THE OFFICE

CHAPTER CONTENTS

Legal Qualifications of Clerks of Court
Method of Election or Appointment and Term of Office
Oath Office
Bond Requirements
Compensation of Clerks of Courts
Vacancies
Qualifying Deadlines
Disclosures and Election to Office

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 years³ 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 \$50,000 in counties with less than 15,000 in population and \$100,000 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:

I. 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 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)).

Entry and Filing of Bonds. The required bonds, after being acknowledged, before approved and certified by the court, shall be entered upon the minutes within thirty (30) days, and shall then be recorded in the office of the county register of deeds and transmitted to the office of the county clerk for safekeeping.

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

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 property 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 attorney's 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)) 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 attorney's 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 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 permitted¹⁰,
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 official (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 officeholder 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 interest 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)).

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 term's "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. U 89 - 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. U 89 - 122 (October 24, 1989), relative to acceptance of resign.

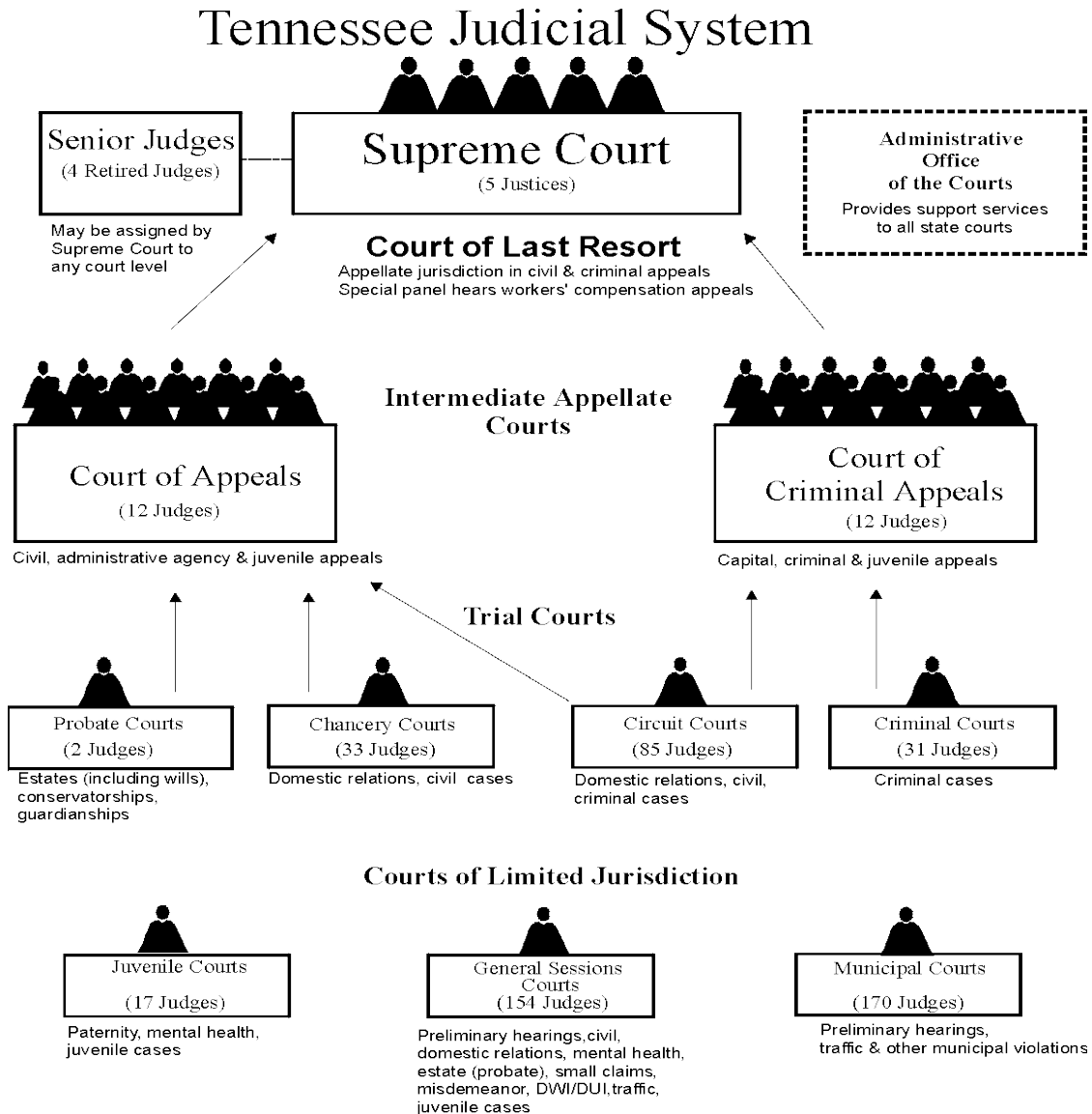
II. OVERVIEW OF COURTS

CHAPTER CONTENTS

Chart of Tennessee Judicial System
Map of Judicial Districts
Chart of Court Clerks of the Tennessee Judicial System
The Tennessee Supreme Court
Court of Appeals and Court of Criminal Appeals
Office of the Appellate Court Clerk
State Trial Courts
General Sessions and Other Courts of
 Limited Jurisdiction
Tennessee Clerks of Court Conference
Administrative Office of the Courts

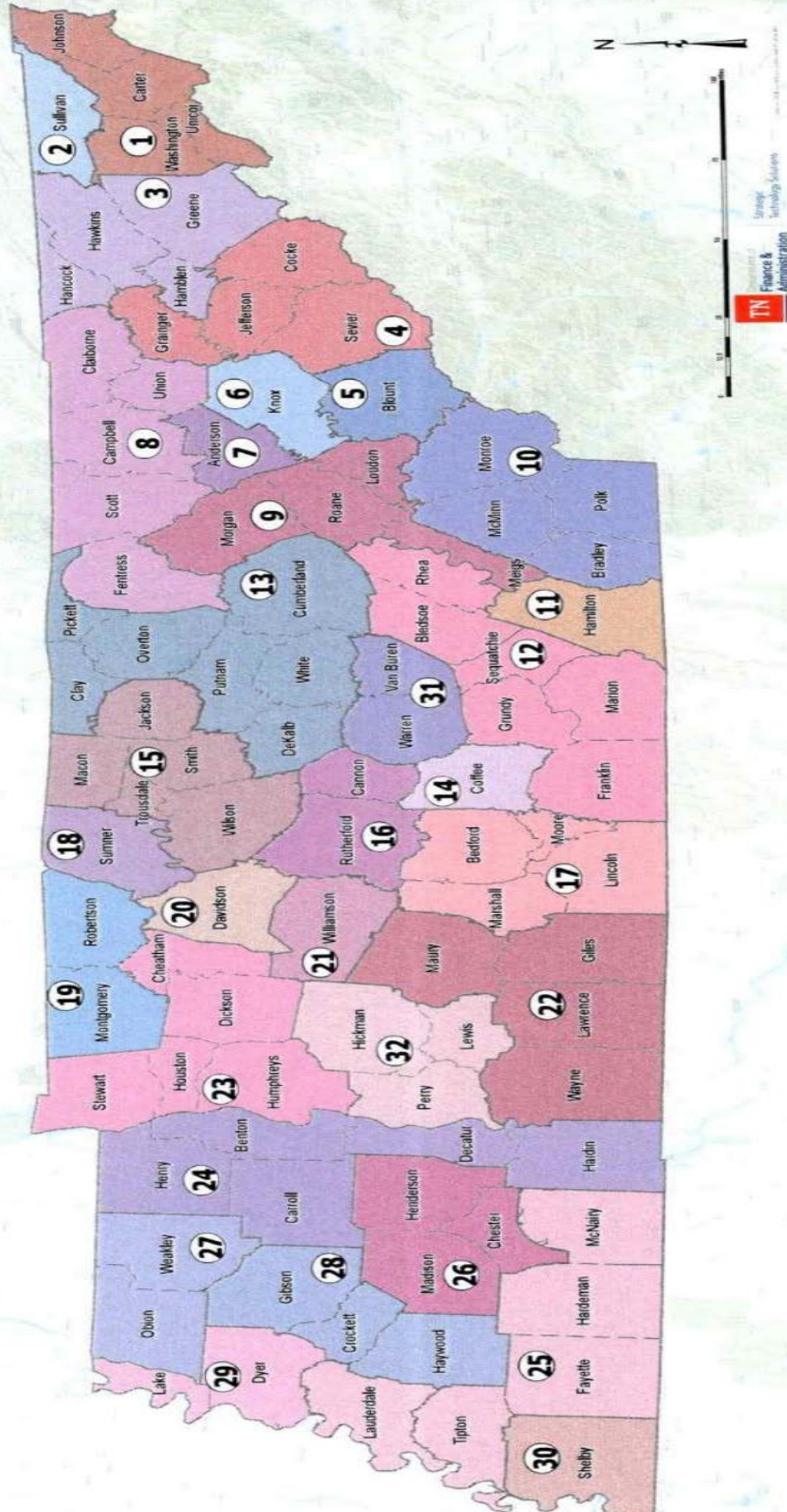
CHART OF TENNESSEE JUDICIAL SYSTEM

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.



TN Judicial Districts

Effective September 1, 2022*





Tennessee Judicial Districts

There are 95 counties in Tennessee which are divided into 32 judicial districts. Each judicial district has a Circuit Court and Chancery Court. Eleven districts have criminal courts. Two districts have Probate Courts. *

Judicial District

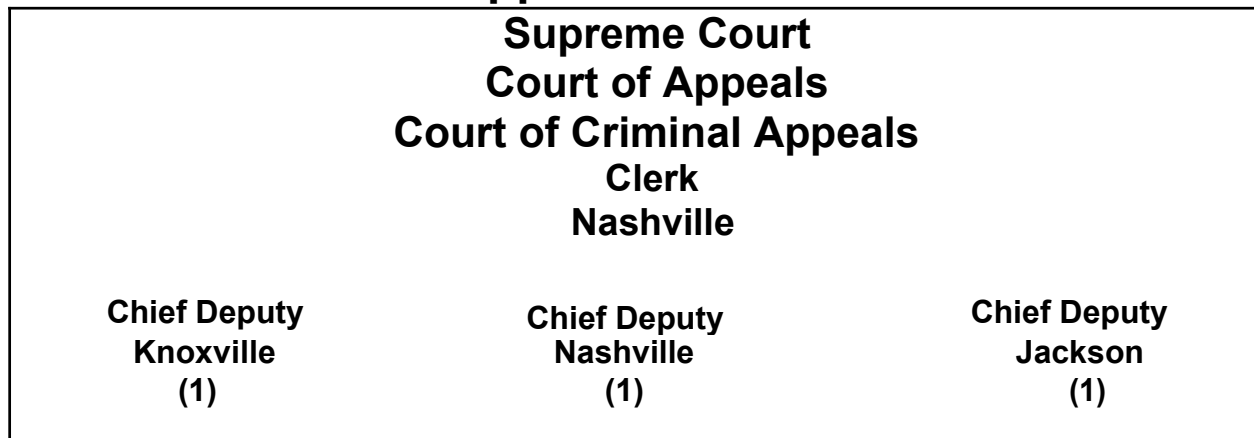
Counties Served

First Judicial District	Carter, Johnson, Unicoi, and Washington
Second Judicial District	Sullivan County
Third Judicial District	Greene, Hamblen, Hancock, and Hawkins
Fourth Judicial District	Cooke, Grainger, Jefferson, and Sevier
Fifth Judicial District	Blount
Sixth Judicial District	Knox
Seventh Judicial District	Anderson
Eighth Judicial District	Campbell, Claiborne, Fentress, Scott and Union
Ninth Judicial District	Loudon, Meigs, Morgan, and Roane
Tenth Judicial District	Bradley, McMinn, Monroe, and Polk
Eleventh Judicial District	Hamilton
Twelfth Judicial District	Bledsoe, Franklin, Grundy, Marion, Rhea and Sequatchie
Thirteenth Judicial District	Clay, Cumberland, Dekalb, Overton, Pickett, Putnam, and White
Fourteenth Judicial District	Coffee
Fifteenth Judicial District	Jackson, Macon, Smith, Trousdale, and Wilson
Sixteenth Judicial District	Cannon and Rutherford
Seventeenth Judicial District	Bedford, Lincoln, Marshall, and Moore
Eighteenth Judicial District	Sumner
Nineteenth Judicial District	Montgomery and Robertson
Twentieth Judicial District	Davidson*
Twenty-First Judicial District	Williamson
Twenty-Second Judicial District	Giles, Lawrence, Maury, and Wayne
Twenty-Third Judicial District	Cheatham, Dickson, Houston, Humphreys, and Stewart
Twenty-Fifth Judicial District	Fayette, Hardeman, Lauderdale, McNairy, and Tipton
Twenty-Sixth Judicial District	Chester, Henderson, and Madison
Twenty-Seventh Judicial District	Obion and Weakley
Twenty-Eighth Judicial District	Crockett, Gibson, and Haywood
Twenty-Ninth Judicial District	Dyer and Lake
Thirtieth Judicial District	Shelby *
Thirty-First Judicial District	Van Buren and Warren
Thirty-Second Judicial District	Hickman, Lewis, Perry

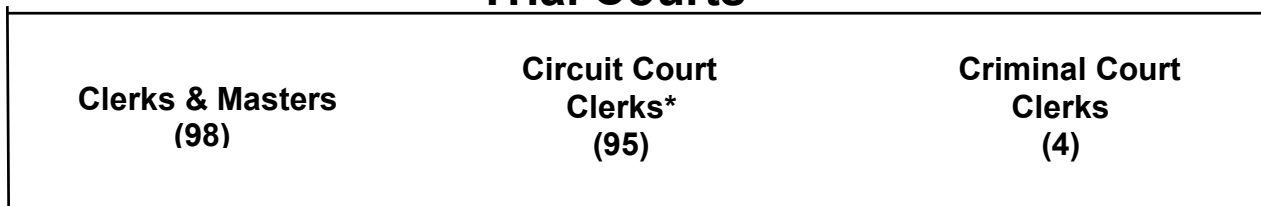


C O U R T C L E R K S O F T H E T E N N E S S E E J U D I C I A L S Y S T E M

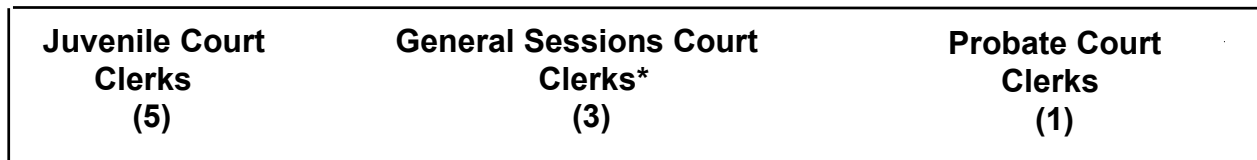
Appellate Courts



Trial Courts



Courts of Limited Jurisdiction



***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 Courts¹¹

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. § 4; 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).

¹¹ *Tennessee County Government Handbook*, The University of Tennessee, County Technical Assistance Service (4th Edition)

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

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.

Michelle Long is the Administrative Director of the AOC. With over 25 years of experience in private practice, government, and in-house counsel offices, and a law degree from the University of Tennessee, her appointment became effective February 1, 2022.

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 clerk's 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. You can access information about the boards or commissions at www.tncourts.gov/boards-commissions.

All departments of the AOC may be reached by calling 615/741-2687 or visiting www.tncourts.gov.

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

Powers

General Overview of Duties

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.

Powers¹³

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 Duties¹⁴

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.

¹³ 6 Tenn . Juris. Clerk s of Courts § 12 (1983).

¹⁴ 6 Tenn . Juris. Clerk s of Courts § 11 (1983).

III. ETHICS, OUSTER AND LIABILITY

CHAPTER CONTENTS

Financial Conflicts of Interest
Other Statutory Conflict of Interest Provisions
Conflicts of Interest Based on Offices or Employment
Perks and Bribes
Time and Use of Property Considerations
Criminal Offenses
Ouster
Liability Problems
AJS Model Code of Conduct for Nonjudicial Court Employees

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 ensure 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 opined⁵¹ 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 of 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 anything 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):

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

<u>Misdemeanor</u>	<u>Years of Sentence</u>
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).
6. Engaging in gambling; or
7. 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:

<u>Type of Claim</u>	<u>Limit</u>
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.

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*, Mar-Apr 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 Ill in ois*, 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. Dicks on County, Tennessee* 814 F. 2d

AJS MODEL CODE OF CONDUCT FOR NONJUDICIAL COURT EMPLOYEE

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 advice 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 maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule.
- C) 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.
- D) 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.
- E) No court employee shall give legal advice or recommend the names of private attorneys.
- F) 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.
- G) Every court employee shall immediately report violations of this Code to the appropriate designated authority.

- H) 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. GUIDES

CHAPTER CONTENTS

Adoption
Appellate
Audit
Child Support
Civil Actions
Conservatorship and Guardianship
Criminal
Delinquent Taxes
General Sessions
Juvenile
Jury
Miscellaneous
Order of Protection
Probate
Records Management
Special Commissioner/Master

Adoption

- Termination of Parental Rights
- Adoptions
- Appeals
- Records

CLERK'S GUIDE TO ADOPTIONS

*As Presented by Kevin Weaver,
TN Clerks of the Court Conference Fall 2021*

I. TERMINATION OF PARENTAL RIGHTS

A. Jurisdiction: T.C.A. 36-1-113, 36-1-111 (b)

1. Circuit
2. Chancery OR
3. Juvenile

B. Voluntary Surrenders: A document executed under the provisions of T.C. A. 36-1-111

1. By whom? Any birthparent or legal guardian, regardless of age
 - Court may appoint GAL for a minor parent - T.C.A. 36-1-110
2. To whom? T.C.A. 36-1-111 (c)
 - Any prospective adoptive parent, 18 years of age or older
 - TN DCS
 - Licensed child-placing agency
3. When? T.C.A. 36-1-111 (d)(3)
 - No sooner than the 4th calendar day after child's birth
 - Unless for good cause shown, which is entered in minute book, a court waives the waiting period
4. Where? T.C.A. 36-1-111 (b), (k)(1)(c)(iii)
 - Private chambers of court OR
 - Another private area
 - In presence of surrendering person's legal counsel (if applicable)
 - Court has discretion for presence of court's officer or another employee
- 5a. How? 2018 New Surrender Forms
Translating Surrender (2018 Amendment)
 - T.C.A. 36-1-111(k)(1)(A)
 - Unable to read, read in the English language, see, or comprehend the surrender form
 - Documents must be translated
 - Accepting party is responsible for costs of translation/interpreter
- 5b. How? 2018 Surrender Forms
 - Tennessee Surrender signed by birthparent before and attested by Judge or Officiant

- Acceptance by Agency or Prospective Adoptive Parents signed before and attested by Judge or Officiant
 - Surrendering Party's Pre-Surrender Information Form signed before Notary (in person)
 - Do not have Legal Counseling or Social Counseling Forms anymore
 - Contact Veto is easier to understand
 - Accepting Party's Pre-Acceptance Information Form signed before Notary (in person)
 - SURRENDER DOCUMENTS – (Home study must be done in a non-relative)
 - a. New Surrender Forms
 - b. Medical/Social Background Forms
 - c. Mother's Affidavit
 - d. Waiver of Interest and/or Denial of Paternity for Legal Father
 - e. Court Report/Homestudy (if directly to adoptive parents)
 - f. T.C.A. 36-1-113(d)(6) Affidavit waiving custody (if applicable)
 - g. Motion for Order of Partial OR Full Guardianship
 - h. Order of Partial OR Full Guardianship
6. Who Receives Certified Copies of the Surrender Packet? T.C.A. 36-1-111(p)
- Surrendering parent
 - Without court report/home study
 - Agency or Adoptive parents
 - Costs can be charged for certified copies
 - Within 5 days to DCS adoption unit in Nashville (to DCS only if they are the placement agency)
 - Upon request:
 - a. Court where adoption/termination petition is filed
 - b. Party who is petition for adoption where child was not placed by DCS or licensed agency (cost can be charged)
 - c. DCS county office, licensed agency, or licensed social worker providing adoption supervision
 - ORIGINAL SURRENDER DOCUMENTS - T.C.A. 36-1-111(p)(2)(A), (r)(2)(B) – (Surrenders do not go on the Regular Docket – Separate Docket)
 - a. Entered on a special docket, styled "in re: (Child's Name)"
 - b. Permanently filed in a separate and confidential file
 - c. Maintain separate adoption order of guardianship minute book
 - d. Kept locked and available only upon written approval of the court
7. Revocation of Surrender - T.C.A. 36-1-112(a)(1)
- (a) For any reason within three (3) calendar days of date of surrender unless any of the three (3) days falls on a Saturday, Sunday, or legal holiday – those days shall not be counted.

- (b) After the expiration of the three (3) calendar day revocation period, no surrender may be set aside, unless:
- T.C.A. 36-1-111 (d) – Within thirty (30) days of execution of surrender, an action is brought to set aside the surrender based upon duress, fraud, intentional misrepresentation, or invalidity
 - Clear and convincing evidence standard
 - T.C.A. 36-1-118 – By order of the court pursuant to dismissal of adoption proceedings. Before order entered, court must give written notice of not less than five (5) days, excluding Saturdays, Sundays, and legal holidays to the following:
 - Person of entity to whom child was surrendered
 - Any parties to proceedings
 - DCS or licensed child-placing agency or licensed clinical social worker who conducted any studies involving placement of the child
 - Parent whose rights were terminated, but only if court will consider reinstatement of that parent's rights

(c) Revocation Disposition

- Original revocation placed with original surrender
- Either personally give or send by certified mail, return receipt requested, certified copies to the following:
 - Child's parents
 - Prospective adoptive parents
 - Agency to whom child has been surrendered, either DCS or licensed child placing agency
 - Counsel for prospective adoptive parents
- Within three (3) days attach a certified copy of revocation to certified copy of surrender OR adoption petition containing parental consent and send by certified mail, return receipt requested to DCS adoption unit in Nashville
- If within five (5) days of receipt of revocation, a complaint is filed with the revocation court to show cause why the child would suffer immediate harm to child's health and safety if returned, then:
 - Preliminary hearing set within three (3) days of filing of complaint for probable cause hearing
 - If probable cause shown, then a final hearing on the merits shall be set within thirty (30) days of preliminary hearing, except for cause shown in a written order of the court entered on the record

8. Surrenders obtained in another state, foreign country, or state or federal penitentiary

- a. T.C.A. 36-1-111(Q) T.C.A. 36-1-111(q)

b. Party to whom child is surrendered is to file a certified copy in the Chancery, Circuit or Juvenile Court of the county in which he or she resides, in which event the clerk is to process the surrender just as if surrender was taken before that clerk's Judge

9. Parental Consents: T.C.A. 36-1-117(g)(i)

- a. Parental Consent by Un-related person – procedure used in conjunction with filing adoption petition whereby a person may sign the petition for purpose of giving parental consent
- b. An Order Confirming Parental Consent is signed by the Judge after person completes parental consent documents pursuant to T.C.A. 36-1-111 (similar to surrender documents)
- c. Certified copy of Order Confirming Parental consent is sent to DCS adoption unit in Nashville

C. Involuntary Termination – T.C.A. 36-1-113

1. Who may file petition? (separately or part of adoption petition)
 - a. Prospective adoptive parents, including extended family members caring for related children
 - b. Licensed child-placing agency having custody of the child
 - c. Child's GAL
 - d. DCS
 - e. Child's parent under limited circumstance – T.C.A. 36-1-113(g)(10)
2. Special notice provision to incarcerated person – T.C.A. 36-1-113(f)
3. Putative Father Registry Requirement (2019 Amendment)
 - a. Only check TN PFR – <https://www.tn.gov/dcs/program-areas/foster-care-and-adoption/fca/adoption-records/alleged-putative-fathers.html>
 - b. Send PFR REQUEST for clearance within 10 days of filing petition OR state that PFR will be consulted within 10 days of filing petition
 - c. Copy of PFR response to be provided upon receipt
 - d. Don't have to check PFR if DNA test confirms biological father and he is identified in petition

II. ADOPTIONS

A. Jurisdiction: T.C.A. 36-1-115

1. Chancery OR
2. Circuit

B. Definitions

1. Order of Reference – T.C.A. 36-1-102(36)

- The order from the court where the adoption petition is filed that directed SCS, licensed child-placing agency, or licensed social worker to conduct a home study or to complete a report of the status of the child who is the subject of an adoption proceeding.
 - Clerk to send to DCS or Agency
2. Home Study – T.C.A. 36-1-102(27)
- The process in which individuals or families are assessed by the department or licensed child-placing agency, or a licensed social worker, as to their suitability for adoption and their desires with regard to the child they wish to adopt. The home study conforms to the requirements set by the department and it becomes a written document . . . The home study should be kept confidential, and at the conclusion of the adoption proceeding shall be forwarded to the department to be kept under seal.
3. Final Court Report – T.C.A. 36-1-102(21)
- A written document completed by DCS, licensed child-placing agency, or licensed social worker after submission of any prior court reports in response to the court's order of reference. It gives information concerning the status of the child in the home of the prospective adoptive parents and gives a full explanation to the court of the suitability of the prospective adoptive parent(s) to adopt the child. The final court report is designed to bring the status of the proposed adoptive home and child up to date immediately prior to finalization of the adoption and should be the last report the court receives before finalization of the adoption.
- Note:** Cannot set case until this report is filed (not in statute, but good practice).
4. Consent – T.C.A. 36-1-102(15)
- The permission of a child fourteen (14) years of age or older given to the court, in chambers, before the entry of an order of adoption of such child.
 - Process by which a parent co-signs the adoption petition, with the adoptive parents (including stepparent or relative adoptions), for the purpose of agreeing to the adoption and permits the court to enter an order of guardianship.

C. Putative Father Registry Requirements IN Adoptions (2019 Amendment)

*TN PFR – <https://www.tn.gov/des/program-areas/foster-care-and-adoption/fca/adoption-records/alleged-putative-fathers.html>

*PFR of state where the child was born

*PFR of state where child's mother was living or present (or have reason to believe was living or present) at the time of conception

1. Send PFR REQUEST for clearance within 10 days of filing petition OR state that PFR will be consulted within 10 days of filing petition – Copy of PFR response to be provided upon receipt and prior to adoption finalization

2. Don't have to check PFR if DNA test confirms biological father and he is identified in petition
3. Must provide a statement in petition if the State does not have a PFR
4. If State does not permit access, does not provide a response in 30 days, or requires an unreasonable fee and diligent efforts are made to identify father, then court can waive PFR requirement

D. Types of Adoptions

1. Agency Placement
2. Private Placement
3. Relative
4. Step-Parent
5. Adult Adoption

AGENCY & PRIVATE

- Putative Father Response – T.C.A. 36-1-116(b)(13)(A)
- Within 3 business days after filed petition, certified copy sent DCS adoption unit AND to local DCS OR agency/social worker doing supervision
- Home Study Required – T.C.A. 36-1-116
- Order of Reference issued w/in 5 days of filed petition
- Certified copy of surrender documents to be made party of adoption record, kept confidential, placed in sealed envelope and remain under seal – T.C.A. 36-1-116(e)(2)(A)
- Consent of Minor, if 14 or over
- Final Court Report
- Final Order of Adoption
 - T.C.A. 36-1-119, 36-1-120
 - Petition on file or child has been in home for at least 6 months, then 6 months waiting may be waived
- Adoption proceeding must be completed or dismissed within 2 years of filing petition, unless good cause shown why final order should not be entered

RELATIVE & STEP-PARENT – All Same Requirements EXCEPT:

- Home study may be waived – T.C.A. 36-1-119(b)
- Order of Reference may be waived – T.C.A. 36-1-119(b)
- Final Court Report may be waived – T.C.A. 36-1-119(b)
- Final Order of Adoption waiting period may be waived – T.C.A. 36-1-119(b)

FINAL ORDER OF ADOPTION

- Attorney Affidavit disclosing fees and expenses
- Agency Affidavit disclosing fees and expenses
- Final Order of Adoption with specific information included

- Certified copy of Final Order and Affidavits sent to DCS adoption unit in Nashville
- Certified copies of
- Final to adopted person, adoptive parents or their attorney, upon their request at any time AND . . .
- Copy of certified Final Order with
 - Application for Certificate of Birth OR (clerk or attorney need to do)
 - Application or Report of Foreign Birth AND (clerk or attorney need to do)
 - Fees to Registrar of Division of Vital Records of TN Department of Health in Nashville
- a. <https://www.tn.gov/assets/entities/health/attachments/PH-1248.pdf>
- b. <https://www.tn.gov/assets/entities/health/attachments/PH-2591.pdf>

E. Re-Adoptions – T.C.A. 36-1-106

1. Law provides a distinction on re-adoption procedures depending on whether the adopted child:
 - Has an IR-3 stamp on his/her visa (child is a US citizen) OR
 - Has an IR-4 stamp (child is not a US citizen)
2. Re-Adoptions: Petition with IR-3 child
 - Petition
 - Evidence of foreign adoption (decree, order or certificate of adoption)
 - Certified translation of evidence
 - Proof of full and final adoption for U.S. Government (IR-3 Visa stamp or Certificate of Citizenship)
 - With above documents, assign a docket number, file and enter documents, obtaining Order recognizing foreign adoptions
 - NO hearing required, Only Order
3. Re-Adoptions: Petition with IR-4 child
 - Petition
 - Evidence of foreign adoption, with certified translation
 - No putative father response
 - No court report
 - No 6-month waiting period
 - Attorney affidavit
 - Agency affidavit
 - Final hearing and Order
4. Adult Adoptions
 - Petition

- Adult being adopted to co-sign petition with adoptive parent
- Attorney affidavit
- Final hearing and final Order

III. APPEALS

T.R.A.P. 8A provides for expedited appeals in termination of parental rights cases

IV. RECORDS

The motion must be filed in:

- Court of original jurisdiction of adoption proceeding, or
- If no adoption proceeding has been filed, in Chancery or Circuit Court of county where record is located or in Chancery or Circuit Court of any county with population of 100,000 or greater, according to 1990 federal census; or
- If original court of jurisdiction no longer exists, then the Chancery Court for the county in which such court was established or in Circuit or Chancery Court in county with 100,000 or greater population, as of the 1990 federal census or subsequent census
- Only in Chancery Court for Davidson county for those who have requested records under specific sections of the statute and claim to have been improperly denied access to information by DCS or Department of Health

A. Adoption Records: Confidentiality of Records: T.C.A. 36-1-125

1. All documents filed in the context of a surrender or adoption action, and the information contained in those documents are confidential and may not be disclosed, except in the following situations:
 - By the judge, clerk, DCS, licensed child-placing agency, or licensed social worker in any act necessary for the adoption, custody or guardianship proceedings
 - By the above individuals for the placement, study, or supervision of a person for whom an adoption, custody or guardianship proceeding is pending
 - By the above individuals to carry out their duties consistent with the law
2. The use of these records for any legal proceeding other than the adoption proceeding or termination of parental rights proceeding are only permitted in conjunction with a protective order restricting further disclosure or dissemination.
3. Unauthorized disclosure is a Class A misdemeanor.
4. An unauthorized disclosure for “personal gain or for a malicious purpose” is a Class E Felony.

B. Sealing of Records: T.C.A. 36-1-126

1. All court records are to be sealed
 - After the entry of a final order of adoption;
 - After the entry of a final order dismissing the adoption;
 - After the entry of an order revoking a surrender or parental consent;
 - After the entry of an order dismissing a termination of parental rights proceeding filed in conjunction with an adoption proceeding; OR
 - Upon conclusion of all termination of parental rights proceedings that were filed in conjunction with an adoption proceeding
2. In the event of an appeal of any ruling of the trial court in an adoption proceeding, records remain confidential “and shall not be open to inspection by anyone other than the trial or appellate courts, the clerk, the parties to the proceeding, or the licensed child-placing agencies or the licensed clinical social worker. . . that have been involved in the case.”

C. Access to Records: T.C.A. 36-1-127

1. Pre-March 16, 1951 Records – All pre-March 16, 1951 adoption records and all records of adoptions involving the Tennessee Children’s Home Society are open to adoptive persons and birth relatives and relatives by adoption.
2. Post-March 16, 1951 Records
 - 1996 Legislation
 - For adoptive persons 21 years of age or older
 - Records not open if the birth mother was a victim of rape or incest (unless she consents to the disclosure)
 - No home study information is to be provided
3. Any person who is eligible to receive record access must submit a request for access through the DCS post-adoption unit in Nashville in order to obtain written authorization to access the record.

D. Court-ordered Release of Records: T.C.A. 36-1-138

Under specific guidelines, and for specific grounds that must be shown to the court, a movant may file a written, sworn motion to obtain access to information in files or records of adoption proceedings, or in an adoption record, sealed adoption record, sealed record, post-adoption record or adoption assistance record.

E. Breathe Easy Provision: T.C.A. 36-1-122

This provision, among other things, provides that “. . . failure of the clerk of the court . . . to perform any of the duties or acts within the time requirements of this part shall not affect the validity of any adoption proceeding.

Appellate

- Definitions
- Section 1, Notice of Appeal
- Section 2, Cost Bonds
- Section 3, Filing of the Record
- Section 4, Contents of the Record
- Section 5, Organ of the Record
- Section 6, Exhibits
- Section 7, Rule 9, Interlocutory Appeal
- Section 8, Rule 10, Extraordinary Appeal by Permission
- Checklist
- Resources
- Forms
- Notice of Appeal
- Appeal Bond for Cost



APPELLATE RECORD PREPARATION HANDBOOK FOR TRIAL COURT CLERKS

**Office of the Clerk of the Appellate Courts
Tennessee Supreme Court Building
401 7th Avenue North
Nashville, Tennessee 37219**

Definitions

Appellant	The appellant is the party filing the notice of appeal. The plaintiff(s) or defendant(s) may be the appellant. In Tennessee, the style of the case does not change according to whether the plaintiff or the defendant appeals. For example, if the case in Tennessee was <i>Smith v. Jones</i> in the trial court, and Jones files a notice of appeal, the case style does not change to <i>Jones v. Smith</i> in the appellate court. It remains <i>Smith v. Jones</i> even though Jones is the defendant/appellant.
Appellee	The appellee is the party who assumes the position of defending the trial court's judgment on appeal.
Clerk	Clerk of the Appellate Courts
Interlocutory	An interlocutory appeal is an appeal ruling from a trial court Appeal that an appellant makes before the conclusion of the case.
Record	The record on appeal consists of the technical record, the transcript of the evidence, the exhibits, requests for instructions from the jury and any other items designated by a party that can be properly included in the record as provided by Rule 24(g), T.R.A.P.
Transcript of Evidence	The transcript of evidence is the court reporter's transcription of the proceedings at trial.
Technical	The technical record consists of the papers filed in the trial court Record designated for inclusion in the record on appeal.
T.R.A.P.	T.R.A.P. is the abbreviation for the <u>T</u> ennessee <u>R</u> ules of <u>A</u> ppellate <u>P</u> rocedure. These rules can be accessed through the website of the Administrative Office of the Courts (AOC) at www.tncourts.gov . Thomson Reuters Publishing publishes the volume annually, and it contains all changes, corrections, and additions made to the court rules during the preceding year.
Surety	A surety is the person who guarantees the payment of a debt or obligation of another party who is referred to as the principal. In this forum, the Surety is guaranteeing the cost of the Clerk of the Appellate Courts

Section 1 - Notice of Appeal

- 1.01 What is the Notice of Appeal?** The Notice of Appeal is a designation by the Appellant of his intent to appeal a ruling by the trial court. A Notice of Appeal form has been developed and approved by the Supreme Court (“Clerk’s Notice of Appeal”). The form is available at the Forms section of the AOC website. Although preferred, use of this form is not required by the T.R.A.P.
- 1.02 Who prepares the Notice of Appeal: the clerk or the attorney? What about pro se appellants?** The appellant’s attorney is responsible for preparing the notice of appeal. If an appellant is pro se (not represented by an attorney), the appellant, not the trial court clerk, is responsible for preparing the notice of appeal.
- 1.03 What must be included in the Notice of Appeal?** There is no specific form required by TRAP for initiating an appeal. The Clerk’s Notice of Appeal form requests information that is necessary for the Clerk to create the appeal file prior to the receipt of the complete record. While all the information requested is important, it is especially important that the Clerk receive the names and the addresses of the attorneys for all parties as well as the names and addresses of all parties involved in the appeal. If all of the names are not on the Notice of Appeal because the Appellant has designated the parties as “et al”, it would be helpful if you could provide the Clerk with missing names. It is also important that the form be legible so that the deputy clerk in the Clerk’s office can process the file.
- 1.04 What should the trial court clerk do with the Notice of Appeal?** Upon the filing of the notice of appeal, the trial court clerk should immediately send a stamp-filed copy of the notice of appeal to the Clerk’s Office along with one of the following:
- A stamp-filed copy of the appeal bond. If \$1,000 cash is submitted rather than the signature of a surety, the trial court clerk should send the \$1,000 cash to the Clerk’s office.
 - An approved affidavit of indigency or other order designating the Appellant as a pauper.
 - A notice that no appeal bond has been filed.
- 1.05 To which appellate court should the trial court clerk send a copy of the notice of appeal?**
- **Civil cases** (appealed from Circuit Court, Chancery Court, General Sessions Court in certain instances, Probate Court, and Juvenile Court in certain instances): The Court of Appeals
 - **Criminal cases** (appealed from Criminal Court, circuit when exercising criminal jurisdiction, or General Sessions Court in certain instances): The Court of Criminal Appeals
 - **Workers’ compensation and BPR:** Supreme Court
- 1.06 If more than one party files a notice of appeal, which one should the trial court clerk send?** The trial court clerk should send copies of all notices of appeal to the

Clerk's Office. The deputy clerk of the Clerk's Office will enter a record of all notices and designate one party as the appellant and the others as an appellee, unless a different designation is deemed appropriate. Usually, this designation is determined by which party filed the notice of appeal with the trial court clerk first, but this is not always the case.

- 1.07 What if the appellant files the notice of appeal before the judgment being appealed is signed and entered?** The trial court clerk should send the Notice of Appeal to the Clerk promptly after filing. Along with the Notice of Appeal, the trial court clerk should notify the Clerk that the judgment order has not been signed and entered. Upon entry of the judgment order, the trial court clerk should promptly advise the Clerk of the date of its entry. For purposes of preparation of the record, the trial court clerk should treat a prematurely filed notice of appeal as if it were filed *after* the entry of the judgment on the same day as the entry of the judgment.

Section 2 - Cost Bonds

- 2.01 What Cost Bond is Required for an Appeal?** Pursuant to TRAP Rule 6, a cost bond is required to be filed by the Appellant. The Clerk now requires an open bond which states that the Appellant will be responsible for all the costs of appeal. In addition to the Appellant, the surety must also sign the bond and is responsible for paying the costs on appeal in the event the Appellant fails to pay the costs on appeal.
- 2.02 If a notice of appeal is filed without an appeal bond, and the appellant has not been declared a pauper, what should the trial court clerk do?** The trial court clerk must promptly certify to the Clerk's Office the failure of the Appellant to provide an appeal bond. This notice should be sent to the Clerk's Office when the trial court clerk sends the notice of appeal. In such an event, the appellate court will issue a "show cause" order advising the Appellant that the Court may dismiss the appeal if the Appellant does not comply with T.R.A.P. Rule 6. This procedure will help the trial court clerk avoid unnecessarily preparing a record for an appeal which the appellate court would later dismiss.
- 2.03 Who can act as a surety?** A surety is a person who is willing to assume responsibility for the costs of the appeal if the Appellant is unable or unwilling to pay. In most cases, the Appellant's attorney will sign as the surety. However, the Appellant may also obtain a surety from an approved entity or a resident of Tennessee who has sufficient assets in Tennessee to pay the costs on appeal in the event that the Appellant fails to pay the costs.
- 2.04 What if the principal does not have anyone to act as surety?** The Appellant will then need to make deposit of \$1,000 cash with the trial court clerk in lieu of a surety bond to secure the payment of costs of appeal.
- 2.05 What information needs to be included on the bond?** The Clerk's Office checks to make sure that there is a signature for both the principal and the surety. If the attorney signs for the principal and acts as surety, he or she needs to sign the form twice. Other information that the Clerk's Office requires is the street addresses of the principal and the surety and the social security number of the principal and surety if the principal is a person. **Note:** P.O. boxes are not acceptable. Also, the cost bond should be stamped filed by the trial court clerk.
- 2.06 If the appellant was allowed to proceed as a pauper in the trial court, does he still have to provide a cost bond on appeal?** If the trial court judge declared the party a pauper and that party proceeded as a pauper in the trial court or is being permitted to proceed as a pauper on the appeal, that party may proceed as a pauper on appeal, and therefore, will not have to file a cost bond with the notice of appeal.
- 2.07 If the appellant was allowed to proceed as a pauper in the trial court, what must be sent to the Clerk in lieu of the cost bond?** The trial court clerk should send a copy of the trial court's order permitting the appellant to proceed as a pauper. This order may be a separate order or an affidavit of indigency filed by the appellant in the trial court

with the signature of the judge indicating that the appellant was allowed to proceed as a pauper in the trial court. This document should be sent to the Clerk's Office with a copy of the notice of appeal.

2.08 Who may reject a bond on the basis that the surety does not have sufficient assets in Tennessee to pay the costs of the appeal in the event that the Appellant fails to pay the costs on appeal at its conclusion? Under T.R.A.P. Rule 6, the Clerk has the authority to reject an appeal bond on the grounds that the surety for the appellant does not have sufficient assets in Tennessee to pay the costs of the appeal in the event that the principal fails to pay the costs on appeal at its conclusion. If you are aware of an issue with a surety, please notify the Clerk.

Section 3 - Filing of the Record

- 3.01 After the trial court clerk has received the notice of appeal, when is the record due?** Once the appellant files the notice of appeal, the appellant has 60 days in which to file a transcript or statement of the evidence. As stated in T.R.A.P. Rule 25(a), the trial court clerk should send the record to the Clerk's Office within 45 days after the filing of the transcript or the statement of the evidence. If a party files a notice of no transcript within 15 days of filing the notice of appeal in accordance with T.R.A.P. Rule 25, the trial court clerk should prepare and transmit the record within 45 days of the filing of the notice of no transcript.
- 3.02 What if the trial was extremely long and the court reporter is unable to prepare the transcript in the time allotted?** The court reporter should contact the attorney for whom he/she is preparing the transcript and ask the attorney to file a motion for extension with an affidavit from the court reporter setting forth the grounds for the extension. The trial court clerk and the attorneys will be notified by the Clerk's Office of the court's decision regarding extension.
- 3.03 What should the trial court clerk do if the 60 days from the notice of appeal passes and the appellant files no transcript, statement of the evidence, nor a T.R.A.P. Rule 24(d) notice?** Within 10 days after the 60 day filing period ends, the trial court clerk should notify the Clerk's Office in the form of an affidavit of the failure of the appellant to file a transcript or statement of the evidence within 60 days of the filing of the notice of appeal. The appellate court will enter a "show cause" order requiring the appellant to show cause why the appeal should not be dismissed for failure to comply with T.R.A.P. Rule 24. Note: Sometimes an appellant will include, in either the notice of appeal or the designation of record, a statement that no party wished to file a transcript or statement of the evidence. This is unlikely with the notice of appeal form, but the designation of record should be read carefully because the inclusion of such a statement drastically affects timing of the preparation of the record.
- 3.04 What should the trial court clerk do if the appellant presents the transcript or statement of the evidence for filing after the expiration of 60 days from the date of filing the notice of appeal?** On the upper right-hand corner of the first page, the trial court clerk should write: "Lodged 12/31/05, Joe Smith, Clerk, by Mary Jones, Deputy Clerk." The attorney should be advised that the transcript or statement has been lodged rather than filed because it is late and that he or she must file a motion to permit a late-filed transcript with the appellate court. Unless the appellate court grants an order of extension, the transcript or statement will not be transmitted with the record.
- 3.05 What should the trial court clerk do about preparing the record if the parties opt for voluntary appellate mediation under T.R.A.P. 34?** If parties file a joint stipulation suspending the processing of the appeal so as to undertake voluntary appellate mediation, the Clerk will notify the trial court clerk that the deadlines for filing the transcript and record are suspended for a period of 60 days. At the end of 60 days, the Clerk will then notify the trial court clerk either that the mediation was successful and the appeal has been dismissed or that the mediation was not successful and that the appeal

should resume along with the new deadlines for filing the transcript and record.

- 3.06 What if the trial court judge fails to authenticate the transcript within the 30 days after the expiration of the 15-day objection period?** If the trial court judge has not signed the transcript within 30 days after the expiration of the 15-day objection period, it is automatically authenticated by his or her failure to sign it. The trial court clerk should not withhold a record simply because the trial court judge has not signed the transcript after the passage of the 30-day time period.
- 3.07 What should the trial court clerk do if he or she is unable to prepare the record in the time allotted?** The trial court clerk should make a written request for an extension of time from the appellate court. The request must detail the reason for the extension and must be made within the time originally allowed for completing the record or within any extension previously granted. Note: If the trial court clerk does not prepare the record and file it with the Appellate Court Clerk's Office within the allotted time, plus any extensions granted, the appellate court may enter an order requiring the trial court clerk to forfeit the clerk's entire cost of preparing and transmitting the record.
- 3.08 What should the trial court clerk do if he or she realizes that he or she has missed the time to file the record?** If the time has expired for timely filing of the record in a case, the trial court clerk will need to file a motion and affidavit with the appropriate appellate court to accept the late-file record.

Section 4 - Contents of the Record

4.01 What should the record contain?

- A. Copies of all of the papers filed in the trial court except the items listed below:
- subpoenas or summonses for any witness or defendant who appeared at the trial;
 - all papers relating to discovery, including:
 - depositions
 - interrogatories and answers to interrogatories
 - reports of physical or mental examinations
 - requests to admit
 - all notices, motions, or orders related to discovery
 - any list from which jurors are selected
 - trial briefs or memorandums (Note: if one of the parties files a memorandum in opposition to a motion or a memorandum in response to a motion, then it should be included in the record)
 - Other items that should not be included:
 - correspondence
 - court minutes
 - notices sent by the trial court clerk to attorneys regarding docket calls

Note: The trial court clerk should not include the above listed items in the record unless a party designates in writing that one or more of them should be included in the record (see E below).

- B. The originals of any exhibits filed in the trial court during the trial.
- C. The transcript of evidence – the transcript or statement of the evidence or proceedings, which clearly indicates and identifies any exhibits offered in evidence and whether the exhibits were received or rejected by the trial judge.
- D. Any requests for instructions the jury submitted to the trial judge for consideration, whether acted upon or not.
- E. Any other matter that a party designates and that would be proper to include in the record. T.R.A.P. Rule 24(g) states that “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 appeal.”

- 4.02 What if the appellant chooses not to submit the whole record?** If the appellant takes the position that less than a full record can present a fair, accurate, and complete account of what transpired in court in relation to the issues that he or she is appealing, the appellant must, **within 15 days after filing the notice of appeal**, file with the trial court clerk 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. The appellant must also serve a copy of this notice on the appellee's attorney or pro se appellant. If an appellant files a designation to limit the record, the trial court clerk is **only** to include the designated items in the record.

- 4.03 Why might an appellant choose not to have the whole record filed?** The issues on appeal may be so limited that the appellate court would not require the full record, thus, the appellant may designate a smaller record to eliminate any confusion as to the issues raised on appeal.
- 4.04 What if the appellee disagrees with the appellant's designation of the record on appeal?** If the appellee feels that any other parts of the record are necessary, the appellee must, **within 15 days after service of the description and declaration** (as described above in 4.02), file, with the trial court clerk, a designation of additional parts that he or she would like to include in the record. The appellee must also serve a copy of this designation on the appellant's attorney or pro se appellant.
- 4.05 Who is responsible for filing the transcript?** The appellant is responsible for filing the transcript. T.R.A.P. Rule 24(b) describes the process by which counsel determines the content of the transcript. The appellant files the transcript, which the appellant, appellant's attorney, or the court reporter certify as an accurate account of the proceedings, with the trial court clerk within 60 days after filing the notice of appeal. When the appellant files the transcript, he or she must also serve a notice of the filing on the appellee with proof of service filed with the trial court clerk. If the appellee has any objections to the transcript, the appellee must file objections with the trial court clerk within fifteen days after service of the notice of the transcript filing.
- 4.06 What if there was no recording of the testimony?** If there was a trial or evidentiary hearing but no recorded testimony, then the appellant is responsible for preparing a statement of the evidence or proceedings from the best available means, including the appellant's recollection. T.R.A.P. Rule 24(c) outlines the proper procedure for preparing this statement and for dealing with any objections by the appellee. The appellant must file the statement of evidence with the trial court clerk within 60 days of the filing of the notice of appeal.
- 4.07 What if the appellant does not want to file a transcript or a statement of the evidence?** Within 15 days of filing the notice of appeal, the appellant must file a notice that he or she will not file a transcript or statement of the evidence. In addition, the appellant must serve a copy of that notice on the appellee, as T.R.A.P. Rule 24(d) requires.
- 4.08 What if the appellee wants to include a copy of the transcript with the record?** T.R.A.P. Rule 24(d) sets out the procedure by which the appellee can prepare and file the transcript if the appellant chooses not to do so. If the appellee files a notice of intent to file a transcript, then the trial court clerk's time for the preparation of the record begins from the date the appellee files his or her transcript with the trial court. Upon filing of the notice by the Appellee, the T.R.A.P. rules provide that the trial court clerk shall proceed as if the Appellee is the Appellant.

4.09 May an appellant or his attorney check out the transcript immediately after he or she files it with the trial court? During the 15 day “objection period” following the filing of the transcript, the transcript and exhibits must be available to the appellee’s attorney. Neither the transcript nor the trial exhibits should be released to the appellant’s attorney during this period unless the appellee’s attorney has already been given access to the documents. The withdrawing party should be advised that the transcript and exhibits must be returned prior to the 16th day from the date of filing in order for the trial court clerk to have time to assemble the record for submission to the trial court judge.

Section 5 - Organization of the Record

5.01 In what order should the trial court clerk prepare the documents in the technical record? T.R.A.P. Rule 25 states that copies of all papers filed with the trial court (except the transcript or statement of the evidence or proceedings and the exhibits) shall be bound together in chronological order. Chronological order means that the oldest pleading (probably the complaint in a civil case) is on top, and the newest pleading (possibly the notice of appeal or appeal bond) is at the bottom.

5.02 What other papers belong in the technical record?

- A. There should be a table of contents listing the individual contents of the record and each item's page number. The table of contents must be in chronological order (the same order in which the papers should be bound).
- B. There must also be a clerk's certificate, which certifies and enumerates the transmittal of:
 - technical record volume(s)
 - transcript of evidence volume(s)
 - exhibit volume(s)
 - deposition transcripts
 - any other items transmitted by the trial court that do not fall in the above classifications
- C. The technical record should be paginated using a Bates stamp type numbering device or other similar computerized numbering device. While T.R.A.P. Rule 25 does not specify where the record should be numbered, it is preferable to number the pages in the lower right corner. Rule 3 of the Rules of the Court of Appeals provides that technical record volumes are limited to 150 pages each, so if there are more than 150 pages in the record, the trial court clerk will need to divide the record into multiple volumes. This requirement allows for ease of use when dealing with a very bulky record.

5.03 How should sealed documents be included in the record being sent to the appellate court? Sealed documents should be clearly marked when they are filed with the appellate court clerk's office. They should not be bound in the technical record or any collection of exhibits. Specifically, the sealed documents should be placed into clearly marked envelopes, or in the event that there are a large quantity of sealed documents, seal them into a separate banker's box. **A copy of the order requiring that the documents be sealed should be attached to the outside of the envelope or box according to Rule 14 Court of Appeals Rules.** Additionally, sealed documents should not be included in the numbering of the technical record but they should be listed in the Table of Contents for reference purposes.

5.04 What should be included on the cover of the technical record?

- the trial county and court
- the name of the trial court judge
- the trial court docket number
- the correct and complete style of the case
- designation of each party as the plaintiff or defendant and appellant or appellee
- the names, addresses, phone numbers, and Board of Professional Responsibility (BPR) numbers of the attorney for each party, along with a designation of which party they represent
- the date the record is being transmitted to the appellate court clerk's office

Note: A cover sheet for a criminal case should also list the following:

- whether the defendant is in custody
- if the defendant is in custody, his or her TDOC number
- if the defendant is on bond and the amount of the bond
- if the defendant is indigent
- the judgment conviction and sentence

Each volume must have a completed cover. Indicate on the cover if there are multiple volumes ("Volume I of IV"). You should make both the front and back covers of a heavier material than ordinary copy paper or construction paper.

Assemble the record with the cover sheet on top, followed by the table of contents, the pleadings in chronological order, and the clerk's certificate on the bottom. Hole-punch and bind the record firmly with fasteners but NOT TAPE at the top because it will be handled by a number of attorneys, judges, and clerks.

5.05 What if the Clerk's Office contacts the trial court clerk to tell him or her that he or she has made mistakes in putting the record together? The Clerk's Office will return the record with instructions on how to correct the defects. Repeated returns of the same record for correction of the mistakes that the Clerk originally noted may result in a contempt order from the appellate court.

5.06 If one of the parties files a motion or objection while the record is being prepared, should the trial court clerk go ahead and send the record to the Clerk's Office? In certain circumstances, holding the record until an objection or motion is resolved by the trial court is implicit in the purpose of the rules. For example, if a party objects to a portion of the transcript or files a motion to exclude or include portions of the record, the trial court clerk should wait until the issue is resolved by an order of the trial court. On the other hand, there are a number of motions that should not affect the transmittal of the record, e.g., motion to execute the judgment, motion for discretionary costs, etc. If in doubt, the trial court clerk should consult either the trial court judge or the Clerk's Office about transmitting the record. In such instances, it is also prudent for the trial

court clerk to file a written request for an extension of time for filing the record.

5.07

Should the pages to a deposition, transcript or trial exhibit be numbered as part of the technical record? If an unbound copy of the deposition is included in the technical record as an attachment to a pleading, then the pages should be numbered. If the deposition is **not** attached to a pleading, then the pages should already be numbered by the court reporter. The same is true of the transcripts and exhibits.

5.08

How should deposition transcripts be included in the Record? A deposition transcript would not be included in the Record unless it was (a) designated as a trial exhibit, (b) designated as an exhibit to a pleading filed by a party that is automatically included in the technical record, or (c) designated for inclusion in the record by one of the parties. Since a deposition transcript is already bound by the Court Reporter, it is unnecessary for the trial court clerk to bind the deposition in technical record volumes or the exhibit volumes. The trial court clerk may send the deposition transcript in its original binding and list it on the certificate either as an exhibit or a deposition transcript, whichever is appropriate.

Section 6 - Exhibits

6.01 Should the trial court clerk send the original exhibits or copies of the exhibits?

The trial court clerk is required to send the original exhibits with the record. Reference to the exhibits in the rules is a reference to the tangible materials (documents, etc.) marked as exhibits in the trial of a case. A document marked as an exhibit to a pleading should be included in the technical record and not bound separately from the pleading unless the document was removed from the trial court clerk's file and made an exhibit at the trial of the case.

6.02 How should the trial court clerk prepare the exhibits to send to the appellate court?

Under Rule 25(a), T.R.A.P., exhibits must be compiled in numerical order and bound in a volume or volumes separate from the volume of papers filed in the trial court and separate from the transcript or statement of the evidence or proceedings. The volume of exhibits must contain a table of contents listing all exhibits, whether or not they are included in the record. Each exhibit to be included must be securely bound. The exhibits can be hole-punched on the left side or at the top (depending on the binder used) or placed in a durable envelope which must be secured in the binder by punching holes in the left side or at the top. A plastic sheet protector can be used, instead of an envelope, if necessary to hold photos, receipts, or small papers; each plastic sheet protector then shall be bound within the volume of exhibits, tabbing and numbering each exhibit referenced in the table of contents.

6.03 What should the trial court clerk do with large trial exhibits that are greater than 8 ½" by 11" in size?

If an exhibit is included in the record but cannot be bound into the volume of exhibits due to the size or nature of the exhibit, the trial court clerk must include in numerical order in the volume of exhibits a page indicating the number of the exhibit, a description of the exhibit, and a statement of the reason the exhibit is not contained in the volume of exhibits. All exhibits which are to be included in the record but which cannot be bound in the volume of exhibits due to the nature of the exhibits must be placed securely in a durable envelope or other suitable container, which shall be labeled with the style of the case, the docket number, and the exhibit number or the exhibit contained therein. Unfortunately, the Clerk's Office does not have the space or resources to store oversized exhibits. A good rule of thumb to determine if an exhibit is oversized is whether or not it will fit into a standard size expanding file. Unless an attorney insists otherwise, all exhibits larger than that size should be held at the trial court clerk's office.

6.04 What other exhibits should *not* be sent?

Money, drugs, weapons or any other similar physical evidence entered as exhibits should not be sent. Contact the Clerk's Office about any uncertainty as to whether an exhibit should or should not be sent with the record.

6.05 The attorney on this case wants to file the oversized exhibits with the appellate court. What should the trial court clerk do?

If an attorney wants to use his or her oversized exhibits in oral argument, the trial court clerk should instruct the attorney that he/she needs to pick them up from the trial court clerk before his/her oral argument date.

After the oral argument, if the court deems that it is necessary to retain the oversized exhibit(s), the attorney must bring them to the Clerk's Office and file them. He or she should not leave the exhibits in the courtroom and assume that they will be included in the case file.

- 6.06 If the trial court clerk determines that an exhibit should not be included in the record sent to the Clerk's Office, should that exhibit be listed on the clerk's certificate?** Yes. All exhibits must be listed on the clerk's certificate, whether you forward them to the Clerk's office or not. See the sample contained in the "Forms" section of this manual.
- 6.07 What should a trial court clerk do if he or she cannot find some of the exhibits?** List the exhibits on the clerk's certificate in a separate section outlining the exhibits which were unable to be located. See the sample contained in the "forms" section of this manual.
- 6.08 What if the trial court ordered some of the exhibits to be filed "under seal" at the trial?** Occasionally, the trial court seals exhibits. The trial court clerk should list these exhibits in a separate section on the clerk's certificate. There is a sample contained in the "Forms" section of this manual. In addition, Rule 15 of the Court of Appeals Rule requires the trial court clerk to affix a copy of the order from the trial court sealing the exhibit.

Section 7 - Rule 9, Interlocutory Appeal

- 7.01 When may a party seek a Rule 9 appeal?** A party may seek to appeal any interlocutory or, in lay terms, non-final order issued by the trial court. T.R.A.P. Rule 9 allows for a party to request permission to appeal to the appellate court after obtaining permission from the trial court judge.
- 7.02 What is the procedure in the trial court?** If a party wishes to file an appeal pursuant to Rule 9, the party must file with the trial court clerk a motion or application for interlocutory appeal by permission from a non-final order of the trial court within 30 days of the entry of the interlocutory order. The trial court, when ruling on the motion, shall state its reasons for allowing the appeal. T.R.A.P. Rule 9(b) more fully outlines the criteria for this statement from the trial court.
- 7.03 What should the trial court clerk do when the order is filed allowing the interlocutory appeal?** Because the appellant must make an application to the appellate court within 10 days from the date of entry of the trial court's order or the making of the prescribed statement by the trial court, whichever comes later, the trial court clerk should ensure that the attorneys of record are notified immediately upon the entry of the order or statement.
- 7.04 What is the procedure after the appellant files an application?** After the appellant files an application for interlocutory appeal with the appellate court, the appellate court will issue an order either allowing or denying the appeal. The trial court clerk does not need to send any documents to the appellate court unless and until the appellate court grants the application for interlocutory appeal.
- 7.05 When is the record on appeal due?** The trial court clerk shall prepare and file the record within 30 days of the appellate court's order granting permission to appeal.

Section 8 - Rule 10, Extraordinary Appeal by Permission

- 8.01 When does a party seek a Rule 10 (extraordinary) appeal?** A Rule 10 appeal, which, like a Rule 9 appeal, is the appeal of an interlocutory order, may be sought by a party if he/she feels that the trial court has so far departed from the accepted and usual course of judicial proceedings as to require immediate review. The appellant files the application directly with the appellate court requesting permission to appeal the interlocutory order. The trial court clerk need not file any document unless and until directed to do so by the appellate court.
- 8.02 What kind of record is required for an extraordinary appeal?** Usually, the attorney filing the application will include copies of any orders, opinions, or parts of the record which he or she feels are necessary for determining the outcome of the request for permission to appeal. If the appellate court deems that additional portions of the record may be necessary, it will file an order requesting these same records and designating a time limit within which they should be prepared.

Checklist

- _____ Notice of Appeal(s) sent to the Appellate Court Clerk
- _____ Transcript filed and sent to trial judge for approval OR Rule 24(d) notice filed by appellant that no transcript would be filed
- _____ Technical record assembled chronologically
- _____ Table of contents prepared
- _____ Exhibits collected, bound, and prepared for transmittal
- _____ Trial Court Clerk's certification prepared
- _____ Trial Court Clerk's certification compared against the record
- _____ Trial Court Clerk's certification signed by the trial court clerk
- _____ Transmittal date noted on front of the technical record
- _____ Record sent or delivered to appellate court clerk's office

Resources

Appellate Court Clerk's Office:

Eastern Section
P.O. Box 444
525 Main St.
Knoxville, TN 37901
(865) 594-6700

Middle Section
401 7th Avenue North
Nashville, TN 37219
(615) 741-2681

Western Section
P.O. Box 909
#6 Highway 45 By-Pass
Jackson, TN 38301
(731) 423-5840

Internet Website Address:

www.tncourts.gov

Administrative Office of the Courts: 511 Union Street, Suite 600
Nashville, TN 37243
(615) 741-2687

Appellate Forms

- Notice of Appeal
- Appeal Bond for Costs

NOTICE OF APPEAL

Style

v.

Notice

Notice is given that

[List name(s) of all appealing party(ies) on separate sheet if necessary]

appeals the final judgment(s) of the _____ Court of
[List the Circuit, Criminal, [List the County]
Chancery or Juvenile Court]

County filed on _____ to the

[List the date(s) the
final judgment(s)
was filed in the
trial court clerk's
office]

[Name the Court of Appeals (civil), Court of
Criminal Appeals (criminal), or Supreme Court
(Workers' Compensation)]

Additional Information

Type of Case [Check the most appropriate item]

_____ Civil	_____ Habeas Corpus
_____ Criminal	_____ Juvenile
_____ Post Conviction	_____ Dependent and Neglect
_____ Workers' Compensation	
_____ Death Penalty	
_____ Parental Termination	

Trial Court Number

Trial Court Judge

Civil Appeal Cost Bond [Check the most appropriate item]

_____	Filed in trial court with copy attached
_____	Indigent with copy of indigency order or affidavit attached
_____	Cash bond filed in trial court with copy attached

Criminal Appeal Appearance Bond [Check the most appropriate item]

_____ Order appointing counsel with copy attached
_____ Appearance bond with copy attached
_____ Incarcerated pending appeal

TDOC Number [Appellant is an inmate]

List of Parties

Appellant: _____ At trial: ☐ Plaintiff ☐ Defendant
Party's Address: _____
Party's Telephone: _____
Attorney's Name: _____ BPR#: _____
Attorney's Address: _____ Phone: _____

**** Attach an additional sheet for each additional Appellant ****

Appellee(s)

Appellee: _____ At trial: ☐ Plaintiff ☐ Defendant
Appellee's Address: _____
Attorney's Name: _____ BPR#: _____
Attorney's Address: _____ Phone: _____

**** Attach an additional sheet for each additional Appellee ****

CERTIFICATE OF SERVICE

I, _____, certify that I have forwarded a true and exact copy of this Notice of Appeal by First Class, United States Mail, postage prepaid, to all parties and/or their attorneys in this case in accordance with Rule 20 of the Tennessee Rules of Appellate Procedure on this the _____ day of _____, 20__.

[Signature of appellant or attorney for appellant]

APPEAL BOND FOR COSTS

I (we), _____, principal(s)/ Appellant(s), and
I (we), _____, the surety(ies)/ Attorney, bind myself/ourselves
for all costs of appeal in:

vs. Cause No. _____

_____, *or*
PRINCIPAL/APPELLANT (Signature)

_____ by _____
PRINCIPAL (Print) ATTORNEY (Signature)

PRINCIPAL'S ADDRESS: _____

INDIVIDUAL PRINCIPAL(S) SSN OR DL NO.: _____

ENTITY PRINCIPAL(S) FED. TAX ID NO.: _____

(street address only; **NO** P.O. boxes; **NO** in care of principal's attorney)

(Social Security/Driver's License Numbers required for individual principal(s) and Fed. Tax ID required for entity
principal(s) per T.C.A. § 25-1-108)

_____ by _____ SURETY
(Print) (Signature)

Note: If you are signing as surety on behalf of a law firm, please print the name of the firm on the space provided. If
you are signing as an individual surety, please print your name. If you sign as an individual surety, you are
personally responsible for the costs should the principal fail to pay.

SURETY'S ADDRESS: _____

(street address only; **NO** P.O. boxes)

**IF THE PRINCIPAL(S) PAY ALL COSTS OF APPEAL, THEN THIS OBLIGATION IS
VOID. IF PRINCIPAL(S) FAIL(S) TO PAY, THEN THE SURETY IS OBLIGATED TO
PAY ALL COSTS OF APPEAL. *IF YOU DO NOT HAVE A SURETY TO SIGN YOUR
BOND FOR COSTS *: A cash deposit of \$1,000.00 is deemed sufficient instead of a surety
bond, except as otherwise required by the trial court clerk and/or the Appellate Court Clerk.**

A deposit of \$ _____ in cash has been made by _____
with _____ of the _____ court clerk's office on
the _____ day of _____, _____.

APPROVED:

_____ or _____
CLERK OF THE TRIAL COURT CLERK OF THE APPELLATE COURT

Audit

- Comptroller of the Treasury
- Electorate Organizational Chart
- Audit Organizational Chart
- Division of Local Government Audit (Map)
- Information System Best Practices for Local Governments

AUDIT

COMPTROLLER OF THE TREASURY

As Presented by Penny Austin

TN Court Clerks Conference, September 15, 2011

Tennessee Comptroller of the Treasury, Justin P. Wilson (2009 – Present) governs the audit of 89 out of 95 counties. The six exceptions are: Davidson, Hamilton, Knox, McMinn, Shelby, and Washington counties.

I. Audit – What does the Law require?

- Requires the county to be audited annually, 9-3-211, TCA
- Audits are for the year ended June 30

II. Audit Fee

- Cost of the audit is set by 9-3-210, TCA at 30 cents per capita based on the last census.
- The audit fee is paid for from the general fund of the county.

III. Audit Process

- We attempt to have all audits published by March 31 of the following year.
- Auditors are in and out of the county throughout the year doing audit work.
- Entrance conference
- Audit plan
- Findings reviewed with officials with an opportunity to respond
- Reports are public and are posted to the website. <http://www.comptroller1.state.tn.us>

IV. What are some of the things we look for?

- Tone at the Top
- segregation of Duties
- Prenumbered Receipts 9-2-103, TCA
- Disbursements by official prenumbered checks
- Deposits in compliance with the three-day deposit law and deposit intact
- Cash control records currently reconciled with bank accounts, receipts, checks, etc.
- Docket Trial Balance reconciled with general ledger
- Personnel Policies
- Time and Attendance
- Salary Authorizations (Section 8-20-101, TCA)
- Fees properly authorized and assessed
- Excess fees properly reported (Section 8-22-104, TCA)
- Annual financial report filed (Section 5-8-505, TCA)

V. Effective IS Controls

- A. Proper Backup Procedures – (TNCIS is not backed up by AOC.)
 - Section 10-7-121, TCA, requires that records maintained electronically be copied to a storage media daily. Storage media more than one week old shall be stored at a location other than at the building where the original is maintained
 - Daily backups should be stored in a secure location within the office
 - Weekly backups should be rotated to a secure, fireproof off-site location
 - A backup log documenting the location of all backups should be maintained
 - Backups should be tested
- B. Password Maintenance
 - All users should have a unique login and password
 - Passwords should be changed every 90 days
 - Passwords of former employees should be immediately disabled
- C. Disaster Recovery Planning
 - Specific steps to follow to restore system
 - Emergency phone numbers of personnel and vendors
 - Backup storage location
 - Manual Procedures to follow until the system is restored
- D. Virus/Spyware Prevention
 - Virus detection software should be used
 - Virus definitions should be kept current
 - All files, e-mail attachments, etc. should be scanned
- E. Policies and Procedures Manual
 - Operating system and application security
 - Start-up/shut down procedures
 - Back-up procedures
 - Hardware software maintenance procedures
 - Daily, monthly, and year-end procedures
 - Output distribution list
 - Hardware disposal policy
 - Virus prevention policy
 - Loading Operating System Updates – (Delete Receipt-Audit Trail)
 - Restricting Physical Access to System
 - Proper Application Controls
 - Adequate audit trail exists
 - Audit logs are maintained and reviewed

VI. Audit Logs

- A. Local Government
 - Deleted Cases Log
 - Delinquent Tax Log
- B. TNCIS
 - Delete Log Report
 - Delete Tax Log

C. Bridge

- Journal Log
- Close Log
- Receipt Data Log
- Delinquent Tax Log
- Bill of Cost Log

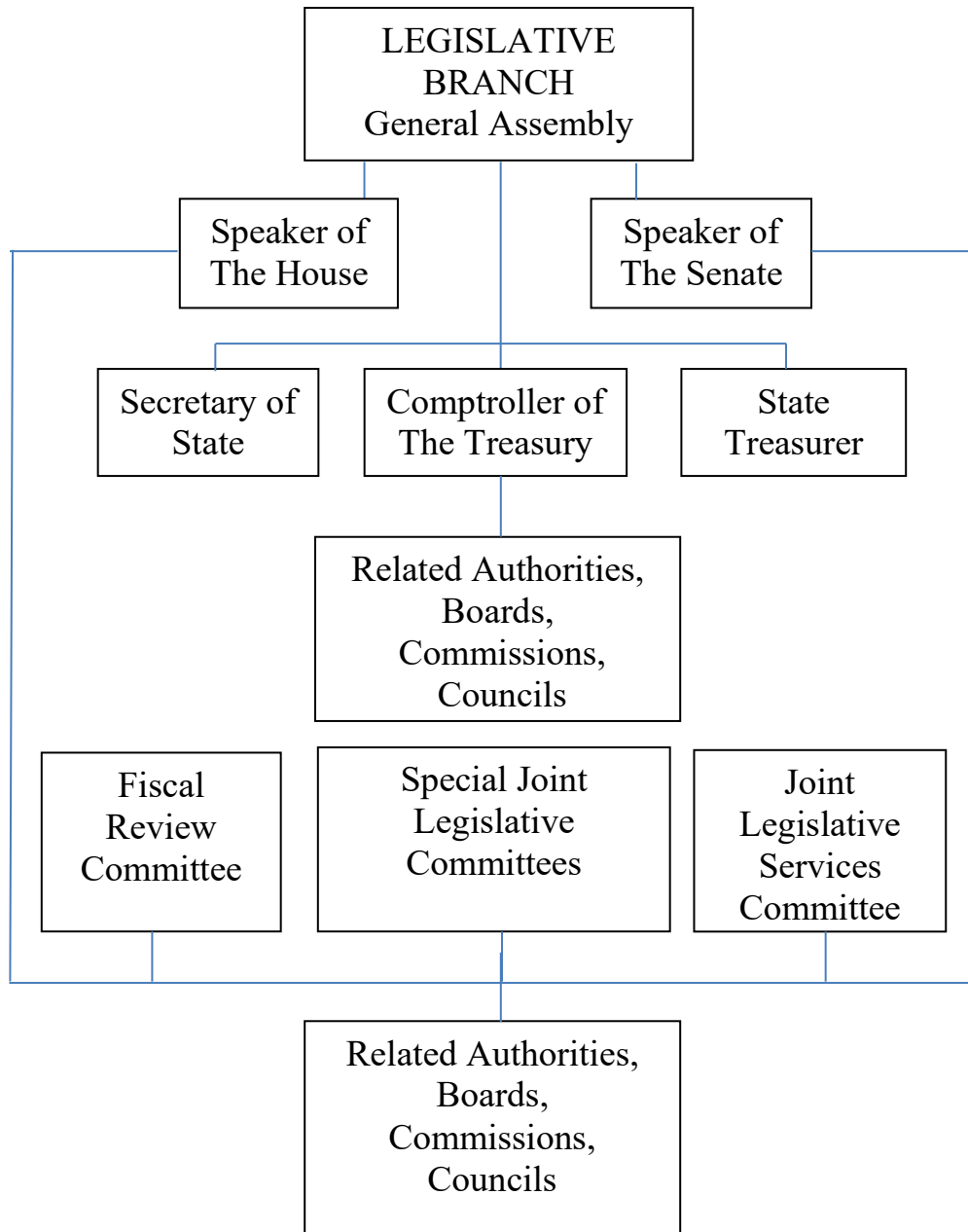
VII. Statement Filings

- A. Uniform Electronic Transactions Act – (BIS Electronic Payments)
(Section 47-10-119, TCA)
- B. Local Government Electronic Technology Act
(Section 4-30-101, TCA)
- C. Remote Access Statement – (Remote Terminal for Public Access)
(Section 10-7-123, TCA)

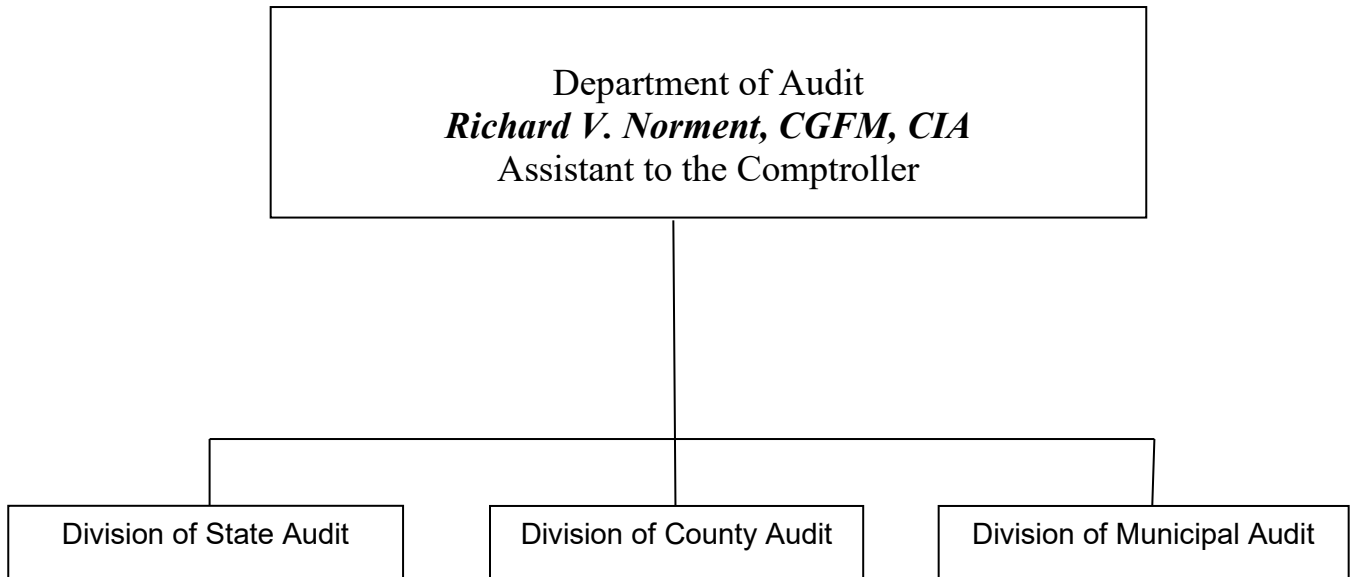
VIII. Investigations Team

- A. Officially began October 1, 2009 – (Fraud Reporting Act)
- B. One investigator per geographical area
- C. Investigations initiated by:
 - Fraud Reporting Form
 - Hotline
 - Tips
 - As a result of audit work

ELECTORATE



AUDIT





Division of Local Government Audit

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P: 615.401.7841 • F: 615.741.6216

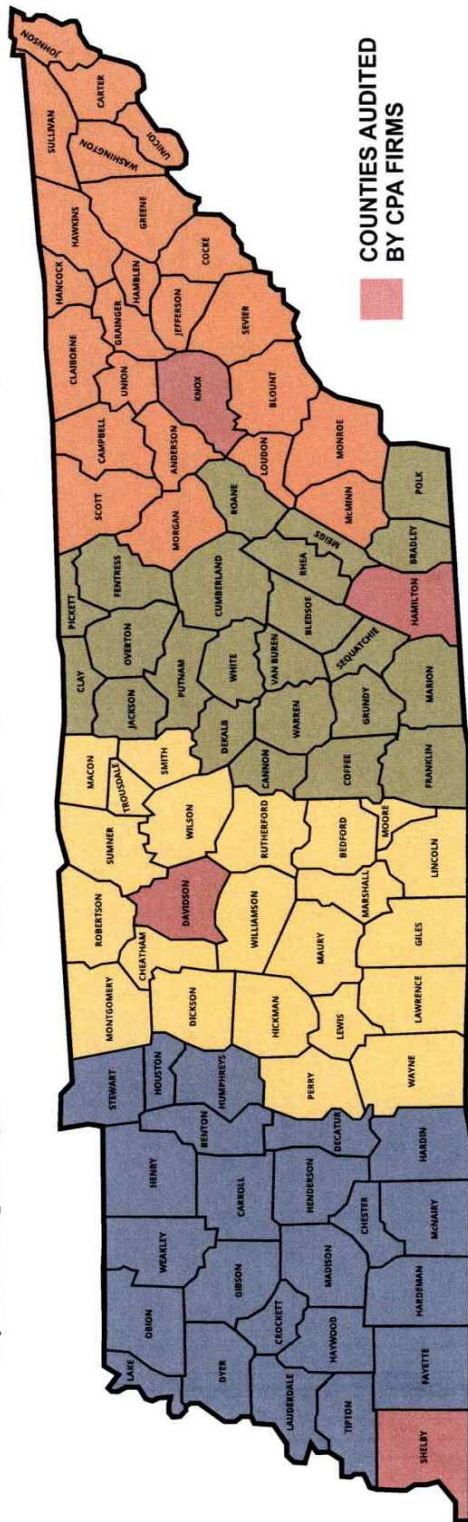
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February 2021

Information System Best Practices for Local Governments



Division of Local Government
Audit

Table of Contents

I. DESCRIPTION OF THE OFFICE	1
I. DESCRIPTION OF THE OFFICE	2
Legal Qualifications of Clerks of Courts	2
II. OVERVIEW OF COURTS	13
T E N N E S S E E J U D I C I A L S Y S T E M	17
III. ETHICS, OUSTER AND LIABILITY	27
Definitions	65
Section 1 - Notice of Appeal	66
Section 2 - Cost Bonds	68
Section 3 - Filing of the Record	70
Section 4 - Contents of the Record	72
Section 5 - Organization of the Record	75
Section 6 - Exhibits	78
Section 7 - Rule 9, Interlocutory Appeal	80
Section 8 - Rule 10, Extraordinary Appeal by Permission	81
Checklist	82
PURPOSE	100
INTRODUCTION	100
Part One: General Controls	100
Part Two: Application Controls	100
Part Three: Other Technology Issues	100
BEST PRACTICES - GENERAL CONTROLS	101
IS Management/Oversight	101
Operating System Security	102
Malware Detection	102
System Backup Procedures	103
Disaster Recovery Planning	103
Wireless Network Security	104
Application Access Controls	104
Application Software Controls	104
OTHER TECHNOLOGY ISSUES	106
Cybersecurity Posture	106
Required Filings	106
FLAT FEE CLERKS	112
Authority to Release Defendants	166
Right to Bail — Bail by Clerk — Maximum Amounts	166

Bail for Material Witness	166
Arrest Warrant Issued for Failure to Comply with Conditions	167
Judgment for Fine and Costs — Deposit Applied to Payment	168
Approval of Bondsmen Withheld, Withdrawn or Suspended	169
Exoneration of Bail Bondsman or Surety by Surrender of Defendant.....	169
Arrest of Defendant by Bail Bondsman or Other Authorized Person	170
Sheriff Assisting Bail Bondsman or Surety in Arrest.....	170
Surrender to Sheriff.....	170
Duty of Bail Bondsman or Surety upon Surrendering Defendant — Hearing	170
CHAPTER 21	234
1. Where the deceased had any goods, chattels, or assets, or any estate, real or personal, at the time of his death, or where the same may be at the time when said letters are applied for;	307
2. Where any debtor of the deceased resides;	307
3. Where any debtor of a debtor of the deceased resides, his debt being unpaid when the application is made;	307
4. Where any suit is to be brought, prosecuted, or defended, in which said estate is interested. (T.C.A. 30-1-103)	307
1. Where a person dies, entitled to a vested or contingent remainder, not reduced	310
2. If a person entitled to distribution was an infant when the deceased died, then,	310
3. Also, a special administration may be granted for the purpose of prosecuting any	310
1. notice and its effect, and;	312
2. the measure of proof required.	312
1. To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;	323
2. If there is no surviving issue, to his/her parent or parents equally;	323
3. If there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother and sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take by representation.....	323
4. If there is no surviving issue, parent, or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation, and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half. (T.C.A. 31-2-104)(b))	323
1. An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.	324
2. In cases not covered by 1 above, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:	324
1. Each legatee, devisee or entity by sending, by first class mail or personal delivery,	

a complete copy of the paragraph(s) of the will containing such bequests to those beneficiaries only receiving bequests; and a complete copy of the will to those beneficiaries sharing in the residue of the estate.	326
2. Each residuary distributee of the deceased for an intestate estate by sending such persons a copy of letters of administration.	326
3. A trustee, if any portion is distributable to a trustee, by sending a copy of the will.	326
Inventory of Safe Deposit Box.....	326
Notice to Creditors	328
Affidavit of Publication or Posting.....	328
Time Limitations on Filing of Claims	328
Requirements of filed claims.....	329
Entry of claim by clerk	329
Clerk's Notice to Personal Representative.....	329
Exceptions to claim.....	329
Trial of Disputed Claims- Jury Demanded.....	330
Trial of Disputed Claims- No Jury Demand	330
Judgment on claim when no exception filed	330
Priority of claims	331
Personal Representative Fees.....	331
Clerk's Fees and Court Costs.....	331
Time for Payment of Claims	332
Distribution of Balance – Final Settlement.....	333
4. That the distributees of the residue acknowledge that the estate has been properly distributed to them, pursuant to statute. (T.C.A. 30-2-601(b)(1)-(2)).....	335
Closing of the File and Discharge of Bond	Error! Bookmark not defined.
ADMITTING <i>FOREIGN</i> WILL TO PROBATE	343
AS A MUNIMENT OF TITLE TO REAL ESTATE	343
Relevant Statutes and Legal Authority: T.C.A. 32-5-101 <i>et seq</i> ; Pritchard's 56-57	343
ADMITTING WILL TO PROBATE SOLELY AS	344
A MUNIMENT OF TITLE TO REAL ESTATE AND PERSONAL PROPERTY.....	344
Relevant Statutes and Legal Authority: T. C. A. 32-2-111	344
Release from TennCare	349
Duties of Personal Representative	349
TennCare's Intent to Recoup.....	349
TennCare Request for Release Form.....	349
Classification of TennCare Claim.....	349
MISCELLANEOUS PROVISIONS	351
Payment of Bank Account by Bank Under \$15,000.00	351
Deposit of Will with Probate Court.....	352
Delivery of Will to Clerk	352
2. Estates wherein the decedent died on or before December 31, 2015:	352

A. Notice to Commissioner (Check with Commissioner of Revenue as it has been stated that they are not processing those forms any longer.)	352
B. Waiver	353
C. Federal Estate Tax	353
D. Estimating the Tax for Bond Purposes	353

The following are the names and addresses of all heirs of the deceased which the affiant(s) is (are) obligated to notify at their last known address (Attach additional heirs on a separate sheet):

Name..... 359

Address 359

Age..... 359

Relationship 359

..... 359

..... 359

..... 359

..... 359

..... 359

Page 2 of 2..... 360

- Do you need help talking with us or reading what we send you? Error! Bookmark not defined.

We obey federal and state civil rights laws. We do not treat people in a different way because of their race, color, birth place, language, age, disability, religion, or sex. Do you think we did not help you or you were treated differently because of your race, color, birth place, language, age, disability, religion, or sex? You can file a complaint by mail, by email, or by phone. Here are two places where you can file a complaint:Error! Bookmark not defined.

PURPOSE

The Comptroller of the Treasury Division of Local Government Audit establishes the following Information System (IS) Best Practices to provide practical information to local government officials about internal controls and encourage these officials to develop, implement, and maintain IS policies and procedures that conform to current best practices. While this document is intended to establish minimum levels of compliance for auditing purposes, **it is not all-inclusive**. Because the IT environment is dynamic and ever-changing, these guidelines will be modified periodically to reflect industry changes as closely as possible.

INTRODUCTION

General and application controls are the two main types of control activities applicable to the IS environment. All IS controls throughout industry may be broadly categorized as such and are presented here as follows:

Part One: General Controls

General Controls are established to provide reasonable assurance that the information technology in use by an entity operates as intended to produce properly authorized, reliable data when needed and that the entity is in compliance with applicable laws and regulations.

Part Two: Application Controls

Application Controls relate to the transactions and data produced by each computer-based automation system; they are, therefore, specific to each application. Application controls should be designed to ensure confidentiality, completeness, and accuracy of accounting records and the validity of entries made.

Part Three: Other Technology Issues

These are other technology related matters that should be properly addressed by local governments.

BEST PRACTICES - GENERAL CONTROLS

IS Management/Oversight

1. Develop policies and procedures related to the office's information systems.
 - a. Ensure that the following items are documented:
 1. System startup/shutdown
 2. Operating system/application security
 3. System backup procedures
 4. Hardware disposition
 5. Virus prevention
 6. Routine processing of applications
 7. Planning and budgeting of IS operations
 8. Output distribution
 - b. Distribute the policies and procedures document to all employees.
 - c. Review and update the document at least annually.
2. Develop use agreements for all county information systems.
 - a. Address password confidentiality in the agreement.
 - b. Address employees' ability to remotely access the office's computer resources.
 - c. Require all users to sign the agreement and maintain original agreements in the office.
3. Develop policies and procedures for systems development and program changes if software is developed by the county internally.
 - a. Utilize a standard systems development methodology.
 - b. Establish a procedure for change requests (e.g., request forms, authorizations, user acceptance)
 - c. Document how program source code is controlled.
4. Request and review a Service Organization Controls (SOC) report if a service organization is used to host software applications. This report should be a SOC 1 Type 2 or SOC 2 Type 2 report. This report should examine the controls in place at the hosting organization.
5. Establish and maintain a formal cybersecurity awareness program that ensures end users are aware of current cybersecurity threats, the importance of protecting assets, and the related risks.
 - a. Provide training to employees via presentations at educational events or videos or other information presented on cybersecurity websites such as COT Cyber Aware.
 - b. Discuss current threats. Examples of relevant topics include but are not limited to:
 - Limiting the types of sensitive information collected, transported, and stored

- Hazards of viruses, malware, ransomware, and spyware
- Accessing malicious web sites
- Downloading files from the Internet or simply clicking links
- Embedded email links and downloading attachments that may appear reasonably valid

Physical Access Security

1. Ensure computer hardware is located in a secure area that is adequately ventilated.
2. Ensure access to the computer system is adequately controlled by door locks, security code locks, or other devices. Only appropriate individuals should have access. Keys should be returned or codes changed when individuals leave service. All visitors should be escorted or remain in sight of employees.
3. Ensure fire prevention and suppressions measures are in place. Fire extinguishers or other suppression devices should be present and should be routinely inspected.
4. Minimize the risk of power outages by using surge protection and uninterruptable power supply.
5. Any negotiable documents should be stored in a secured location when not in use.

Operating System Security

1. Ensure operating system updates are installed on all computers when they become available.
2. Establish policies requiring that passwords be assigned to all accounts. These passwords should not be publicly displayed.
3. Implement password-protected screensavers or configure sleep mode settings so that the workstations require a password after no more than 30 minutes of inactivity.
4. Disable or rename all guest accounts.

Malware Detection

1. Install software on all servers and workstations that is designed to detect viruses and other malware.
2. Ensure the software is configured to install updated definitions as they become available.

System Backup Procedures

1. Develop backup procedures for all computer systems and communicate these procedures to staff.
2. Perform backups of all information on a daily basis and store properly labeled backup media in a secure location.
3. In accordance with Section 10-7-121, *Tennessee Code Annotated*, backups should be rotated to a secure, off-site location on a weekly basis. Possible locations include a vault at another county office building or a safety deposit box at a local bank.
4. If daily backup media does not include yearly information, perform a year-end backup as well. This media should be properly labeled and maintained at a secure off-site location for a period of 3 years.
5. Maintain a backup log that includes information such as the date of backup, media label, and storage location. The log should also note the individual performing the backup and whether they verified that it was successful.
6. Test backup information at least yearly to ensure the system can be successfully restored.

Disaster Recovery Planning

1. Document a plan that, at a minimum, addresses the following:
 - a. A checklist to follow in the event the computer system is inoperable
 - b. Hardware/software vendor and employee contact information
 - c. Location of off-site backup information
 - d. Specific contingency site location
 - e. Inventory of hardware and software
 - f. Manual processing procedures to follow until system is restored.
 - g. Comfort letter from vendor (if applicable)
2. Store a copy of the plan in an off-site location that would be assessable in the event of a disaster. A copy should also be provided to office personnel.
3. Ensure that the plan is updated annually.
4. Review the plan with office personnel at least annually and consider conducting tabletop exercise to discuss a test scenario.

Wireless Network Security

1. Establish physical security controls over wireless network devices such that all devices are kept in an area only accessible to authorized individuals.
2. Ensure that the router password is changed from the default value.
3. Ensure the service set identifier (SSID) is not publicly broadcast and that encryption is used to require a password to access the network.
4. **BEST PRACTICES - APPLICATION CONTROLS**

Application Access Controls

1. Establish policies that require each user to have a unique username and password for accessing software applications.
2. Establish user security access on the principle of least privilege. Users should only have access to those functions that are necessary to accomplish their job responsibilities.
3. Ensure passwords remain confidential. Passwords should not be written down or shared with other employees. A password list should not be maintained. Passwords should not be saved in the browser.
4. Require passwords to be changed at least every 90 days.
5. Remove or disable usernames of former employees as soon as they separate from service.
6. Establish a policy requiring users to exit applications when away from their workstation for an extended period of time and after work hours.

Application Software Controls

1. Examine software functionality to determine if a proper audit trail is maintained within the software applications. Examples of functionalities to examine include the following:
 - a. Alterations or deletions of receipts
 - b. Removal or adjustments of customer accounts
 - c. Alterations or deletions of general ledger entries
 - d. Assignment of sequential receipt numbers

2. Establish procedures to review any audit logs or reports that display voids, alterations, adjustments, or deletions of transactions.
3. Ensure accounting software requires the closure of accounting periods within 60 days of period end.

OTHER TECHNOLOGY ISSUES

Cybersecurity Posture

1. Evaluate and regularly reassess the office's cybersecurity posture. Because many local government offices work closely with a vendor or local IT personnel to maintain their computer systems, they may need to be contacted to aid in this assessment. Examples of areas to consider include the following:
 - a. Properly patching operating systems, software, and databases
 - b. Properly updating virus definitions
 - c. Properly configuring firewalls
 - d. Ensuring backup information is not susceptible to attack
2. Ensure insurance policies provide coverage for cyberattacks. Understand the provisions of the policy and be aware of any exclusions.

Required Filings

1. Ensure that statements are filed with the Comptroller of Treasury as required by Section 47-10-119, *Tennessee Code Annotated*. This statute requires that local governments using an electronic business system that provides for the sending/receiving of electronic records that contain electronic signatures or authorizations file a pre and post implementation statement. A common example would be the acceptance of online payments.
2. Ensure that statements are filed with the Comptroller of Treasury as required by Section 4-30-103, *Tennessee Code Annotated*. This statute requires that local governments implementing new technologies file a statement. A common example of a new technology would be remote deposit capture.
3. Ensure that statements are filed with the Comptroller of Treasury as required by Section 10-7-123, *Tennessee Code Annotated*. This statute requires that local governments who provide remote electronic access to records file a statement 30 days prior to offering this service.

Child Support

- Child Support Program
- Flat Fee Clerks
- Title IV-D Clerk Fees

Child Support

Title IV-D of the Social Security Act, requires all states to have a child support program. The Child Support Program is sometimes referred to as the IV-D program for this reason.

NON IV-D child support cases are established and maintained privately; such as following a divorce. Payments may be ordered to be paid through the Child Support Program's State Disbursement Unit (SDU), however, this is not a referral to the child support program for services. The Child Support Program will only process and disburse child support payments through the SDU to meet federal reporting requirements. No additional services are provided to Non IV-D cases,

IV-D child support cases are established when a parent or caretaker of a child applies for child support services. One does not have to be a recipient of a state-based program to receive services. Applications can be submitted on-line or by downloading the application and submitting by mail, fax or visiting the local Child Support Office. When services are provided by the local child support office, the case becomes a IV-D case. Child support services include, but are not limited to, the following: establish and enforce child support orders including medical support; modification of child support orders; enforce spousal support orders if child support is also involved; use administrative enforcement tools to collect arrearage; involve the court system if administrative means are ineffective; seek enforcement from another state, if applicable; automatic issuance of income withholding orders to new employers as the need arises and maintain balances as a result of payments made through the SDU. The child support program cannot help with civil matters such as divorce complaints, custody, visitation, nor can they provide legal advice on those issues.

A court clerk can choose to be either an **opt-in** or an **opt-out** clerk where the child support program services are concerned. The child support program can be under the auspice of the State of Tennessee, local District Attorney General or be contracted to a private vendor.

OPT-IN CLERK: A court clerk who opts to be a participating clerk and has access to the Tennessee Child Support Enforcement System (TCSES) and who's duties can be any or a combination of the following: enter and update information on TCSES, receipt child support payments in TCSES and submit payments to the State Disbursement Unit (SDU) and participate in the required training for IRS Safeguards with a possible IRS Audit.

OPT-OUT CLERK: A court clerk who does not have access to TCSES to enter or update information, does not receipt or disburse child support, and submits all information to the Central Registry or to the local child support office in cases where private attorneys file orders. A Demographic Sheet, and that form only, should be submitted to the Central Registry in Nashville and not the local CS office. The local CS office should only receive copies of orders that they request or those copies that local attorneys request the local CS office to have.

1. **When a Support Order is entered wherein a Income Assignment Wage Order (IWO) is required:**
 - a. IV-D(Child Support Enforcement-CSE) Case-give CSE a copy of order.
 - b. Non IV-D-fax a Demographic sheet to State Disbursement Unit (SDU). The court order will request an IWO be sent to the employer and you will need to use the Income Withholding Order approved by the OMB (Federal Office of Management and Budget) or the employer may not honor the IWO. Standard Clerk fees apply to the issuance of the IWO.
 - c.
2. **Setting Support-**This is a new action that requires you to set up a case or if you have a divorce action that has not had support ordered, the new filing would also go in that file. You file the action and issue the process. The process should have a court date. Once the process is served, it is ready for court. When an order is signed, you treat it like any other order. The order may close the action or continue it for compliance.

3. **Enforcement or Modification of existing decree**-This is an action that requires you to reopen your original case, with service of process with a specific court date. If service of process is good and the obligor appears, a court order will be submitted by CSE to either:
- a. Make a determination and close the active file-by agreement or after a hearing.
 - b. Continue the case for compliance with a specific court date for court to review.
 - c. Order of determination with CSE to review, you still close your active file and if action is necessary, CSE will file additional paperwork and the case can be reopened again.
- *If the obligor fails to appear after service, either an Order or a Fiat, which requires you to issue an Attachment, with or without bond, for a specific court date will be filed. The obligor who has been attached may request a bond hearing, if so, this should be set for hearing within 15 days.
- **If no service has occurred on the obligor parent with the initial summons, CSE may request the issuance of an Alias Summons with a specific court date and if service is still not had, a Pluries Summons can be requested for the third, and all other subsequent, summons for this action.
4. **Interstate Cases or Entry of Foreign Decree:**
- a. To Establish Paternity or Set Support: This is a new case where you would issue process and have a specific court date before an order is entered.
 - b. To Register a Foreign Decree for Enforcement: This is also a new case. The statute is not specific as to who should send out the notice and complete the certificate of service but, it would be less confusing if the clerk sent out the Notice of Registration of Foreign Support Order to the obligor parent at their last known address and bill the state for the postage. However, most CSE offices choose to send out the notices. The obligor parent has 20 days to contest the registration. On the 21st day you contact the local CSE office and let them know if a contest was filed or if the mail was returned by the post office (if you have TNCIS, put a reminder in the system). When you call the CSE office, one of three responses can occur. First, if no contest is filed, CSE will enter the foreign decree administratively and you can close your active file by operation of law (you fill in the date filed in our office and get the date CSE entered the judgment and complete the Order to retire case for Chancellor to sign, then close the case on our system) and if enforcement is warranted, CSE will file additional paperwork to reopen the case to be set for court. Secondly, a new address may have been obtained for the respondent and the Notice would have to be resent therefore, requiring the clerk to wait another 20 days to see if a response is filed (a new reminder would be placed on the system, if you use this option.) Lastly, if the state requesting registration desires to close the case in Tennessee or if the respondent cannot be found, then the process cannot go forward and you could close the case in your active file (you fill in the date filed in our office and get the date CSE closed their case and complete the Order to close case for Chancellor to sign, then close the case on our system.)
 - c. To Modify a Foreign Decree that has been registered in Tennessee. CSE will file paperwork in the same manner as they would if the case originated in Tennessee with service of process and be set for court. This would be a reopened case.
5. **Transfer of Cases within the State:**
- a. IV-D Cases-A request to transfer the case, along with an affidavit, pursuant to TCA is filed by the CSE office needing the transfer. The non-requesting party has 15 days to object to the transfer, if no objection is filed the case can automatically be transferred and a Notice of transfer is filed. The affidavit or request should be complete with the mailing date of the Notice. If it is not, the clerk should send a letter or some sort of notification,

at the last known address, so that the time-frame for objection can begin. The Clerk has an additional 15 days to copy the file and certify and send to the Clerk of the transferee court, CSE should mail the non-requesting party a copy of the Notice of Transfer.

- b. Non IV-D Cases-A request to transfer the case, along with an affidavit, pursuant to TCA is filed by a requesting party. If the paperwork does not indicate that a copy was sent to the non-requesting party, the clerk should send one to the last known address so that the time-frame for objection can begin. The non-requesting party has 15 days to object to the transfer, if no objection is filed, the case can automatically be transferred and a Notice to transfer is filed and a copy sent to the non-requesting party. The Clerk has an additional 15 days to copy the court file and certify the copies before sending to the transferee court. TCA allows a \$150.00 fee to the transferee court and the court doing the transfer can charge for the certified copies.
- c. By Court Order-If a decree directs a clerk to transfer a case, even before its conclusion, the clerk should copy the record and certify it to the transferee court and charge according to TCA. If the clerk does not have the \$150 fee that TCA allows, you should send it anyway to comply with the court order.

6. **Wage Assignments:**

- a. Non-IVD. Can be ordered in a final decree of divorce or a order modifying final decree, a fee should be collected before IWO is sent by the clerk.
- b. IVD. Child Support Enforcement active cases:
 - 1. Administratively by CSE and clerk is sent a copy.
 - 2. Court order, prepared by CSE and clerk is sent a copy.

Sometimes a case will “flip-flop” from Non-IVD to IVD and vice versa. If the CSE office does not currently have an active case, the clerk will need to issue the IWO and charge the appropriate fee. Also a case can have a IWO in the file, either administrative or court ordered, or never had an IWO and the obligor changes jobs, or wishes to initiate the IWO, and comes in voluntarily and requests a new IWO, the clerk should issue on Non-IVD cases and charge the appropriate fee. On IVD cases, the obligor should be directed to the CSE office.

7. **Fees Charged:** Some functions are performed administratively. The Clerk should receive a copy of any administrative function and should charge the approved fees accordingly to the State of Tennessee, DHS, and bill the State monthly by submitting a spreadsheet, which is supplied by DHS and sent electronically to CSVendor.Invoices.DHS@TN.GOV. DHS provides a list of charges that need to be included on the spreadsheet which includes the IV-D billing code, service performed, fee amount and TN Code Section. (Note: As of 2022, the schedule of fees provided by DHS was established in 1999 which was prior to a statutory change and no longer is included in T.C.A. 8-21-401, however until a new list of fees is provided, the State is still invoiced monthly with the fees established in 1999-see attached list of fees.)

- a. Questions about fees should be directed to Tennessee State Government, Department of Finance and Administration, Accounting: 615-532-9308
- b. Invoice questions should be directed to Theresa Cimino 615-532-0634
- c. Questions about charges on Invoices should go to Krista Gray 615-313-4742 or email at: krista.gray@tn.gov).
- d. Other contacts, Child Support Accounts Payable, 615-313-3182 or Child Support Fiscal, main line, 615-313-5348, Option 4.

All other fees should be charged directly to the parties pursuant to TCA. Child Support ordered in a Court Decree should be by Income Wage Assignment Order (IWO) pursuant to TCA 36-5-101(c)(2)(A)(ii). Sometimes the CSE offices include confidential information of their documents, you should make sure any confidential information is redacted before you file.

WHAT DO I DO WITH:

1. **Petition** (to set support, for criminal contempt, for modification, etc.) –which commonly has service of process filed along with the petition. First, check the computer to see if you already have an existing case or file. You file the petition, issue the process, wait on service, set the case on the court’s docket for the day indicated on the process or subsequent pleading. If it is a new action and not a modification or enforcement, this should be in a new file. If it is a modification or enforcement action, you would reopen the initial file and then proceed with service, etc. Service can be obtained by the **local sheriff’s department**, if so, issue and give to the sheriff to be served within the county. If it is out of the area, it can be served by sending to another sheriff’s department or by certified mail. If the process goes to **another county**, issue like it was being served locally and mail to the other sheriff along with a letter from CSE that request service without requiring the initial service of process fee. If the service going to be attempted by **certified mail**, you file the documents as usual, then certify the copy of the petition and summons and give the certified copies as well as the original summons for the CSE office to send out. The CSE office should retain the original summons and attach the green card when it is returned from the post office, complete the affidavit on the back of the summons and file with the court once the green card is return to their office.
2. **Affidavit of Indigency/Order of appointment** –this is a common filing from court which must be filed, you have to make sure there is no confidential information on the form before you make a copy for the attorney and report the total number at the end of the month to the Administrative Office of the Courts with your assigned court number.
3. **Order** –follow procedure as you would for any other order in your office. If the order disposes of the case, you can remove it from the active docket, either by judgment, agreement or dismissal, and close your file. The order may have a review date, if so, then the case will remain active and be put on the continuance date’s docket. The order may also have a statement that the caseworker will review the file, if so, this is done by the CSE office and if further action is necessary, other pleadings will be filed; this should not affect the closure of your active file.
4. **Motions and Notices**-file like other pleadings and put in the file, if a court date is included, that would need to be noted on the court’s docket.
5. **Fiat or Order for Attachment**- this will need to be issued for service and not the date on the court’s docket, wait for service, etc. The obligor may request a bond hearing to have the bond set or lowered, if so, this will need to be put on the court’s docket within 15 days, you would need to contact the caseworker at the CSE office.
6. **Administrative Pleadings from the State**-mark the document filed and put in current case binder.
Pro Se Pleadings- treat like any other pleading and mark the document filed. If there is a question about the pleading, you should let the judge make the determination about the pleading.

FLAT FEE CLERKS

A(7)N The clerk shall notify the office of the comptroller of the treasury and the county executive of the clerk's election to charge a flat fee in lieu of itemizing fees. The election to charge a flat fee shall apply to all cases set out in the previous item. Elections become effective on July 1, after notice, and shall remain effective indefinitely unless the clerk gives notice to the office of the comptroller of the treasury and to the county executive of a change in the election.

Service	Fee	TN Code Selection
For proceedings in adoption and legitimation cases, change of name, registration of citizenship cases, (plus any litigation tax, if applicable)	\$75.00	a(7)I
In the following cases the clerk may, at the clerk's option, charge a flat fee instead of itemizing the fees set out in subsection (a):		
(i) The Clerk's fee in contempt cases shall be	\$35.00	a(7)M(i)
(ii) The Clerk's fee for cases involving child support enforcement shall be the clerk's fee for foreign order	\$35.00	a(7)M(ii)
(iii) The clerk's fee for cases involving default judgments shall be, for each case	\$75.00	a(7)M(iii)
For petitions to enter a foreign judgment (from other states)	\$75.00	a(7)Q
For making copies as requested, other than for an original filing and other than when preparing a record upon appeal, the fee shall be fifty cents (.50) per page	\$0.50	(i)(4)

Additional Reimbursable Items for All Court Clerks	
Enter State Case Registry Information	\$1.55
Enter Non-IV-D Income Assignment Order	\$1.55
Enter Order on Modifications, Address Updates, Etc.	\$1.55
Receipting child support payments for IV-D and Non-IV-D cases on TCSES (only in cases where an NCP is between employers or order has just started or new employer mails it to you, or when receipting a cash bond or purge payment in a IV-D case). This rate is not available for regular recurring payment as those must be sent to the State Disbursement Unit.	\$.348

TITLE IV-D CLERK FEES ALLOWED PER T.C.A. §8-21-401

Issued 1-15-09
FOR CLERKS WHO ITEMIZE

IV-D Billing Code	Service	Fee	TN Code Section
A	issue summons per defendant	\$5.00	(a)(1)(A)
B	issue order of publication	\$5.00	(a)(1)(A)
C	issue attachment for witness or property	\$5.00	(a)(1)(A)
D	issue injunction	\$5.00	(a)(1)(A)
E	issue any notice required by law	\$5.00	(a)(1)(A)
F	issue capias	\$5.00	(a)(1)(A)
G	issue writ	\$5.00	(a)(1)(A)
H	issue subpoena for paper or record	\$2.00	(a)(1)(B)
I	issue subpoena for witness	\$2.00	(a)(1)(B)
J	issuing each add'l name on state/civil warrant	\$1.00	(a)(1)(E)
K	prepare & issue garnishment to officer	\$2.00	(a)(1)(H)
L	issuing each copy of above process when required by law	\$1.50	(a)(1)(I)
M	issuing each recognizance	\$2.00	(a)(1)(J)
N	issuing each bond	\$2.00	(a)(1)(J)
O	issuing each mittimus	\$2.00	(a)(1)(J)
P	filing each bond	\$2.00	(a)(2)
Q	filing each complaint	\$2.00	(a)(2)
R	filing each motion or other pleading	\$2.00	(a)(2)
S	filing each document	\$2.00	(a)(2)
T	filing each exhibit	\$2.00	(a)(2)
U	filing each article	\$2.00	(a)(2)
V	filing each affidavit	\$2.00	(a)(2)
W	filing each record or paper	\$2.00	(a)(2)
X	qualify each surety on a bond	\$2.00	(a)(3)(A)
Y	take an affidavit	\$2.00	(a)(3)(A)
Z	affix the seal on any legal instrument	\$2.00	(a)(3)(B)
AA	enter order upon rule, trial or execution docket	\$2.00	(a)(4)(A)

BB	enter complaint upon rule, trial or execution docket	\$2.00	(a)(4)(A)
CC	enter motion or other pleading upon rule, trial or execution docket	\$2.00	(a)(4)(A)
DD	enter document upon rule, trial or execution docket	\$2.00	(a)(4)(A)
EE	enter exhibit upon rule, trial or execution docket	\$2.00	(a)(4)(A)
FF	enter article upon rule, trial or execution docket	\$2.00	(a)(4)(A)
GG	enter affidavit upon rule, trial or execution docket	\$2.00	(a)(4)(A)
HH	enter record or paper upon rule, trial or execution docket	\$2.00	(a)(4)(A)
II	enter return of process upon rule, trial or execution docket	\$2.00	(a)(4)(A)
JJ	enter judgment upon rule, trial or execution docket	\$3.00	(a)(4)(C)
KK	enter order of appeal to any appellate court upon rule, trial or execution docket	\$3.00	(a)(4)(E)
LL	bill of costs taxed to state	\$2.00	(a)(4)(G)
MM	enter minutes or transcript of record or copies of pleadings, papers and procedures in a cause, per 100 words, 4 figures to count as word	\$1.00	(a)(5)(A)
NN	certified copy of sentence furnished to superintendent of jail or workhouse	\$3.50	(a)(5)(C)
OO	minute entry or copy of certificate not included in some other service	\$2.00	(a)(5)(E)
PP	preparing and mailing correspondence notifying defendants and attorneys of record of setting civil case on docket	\$2.00	(a)(7)(H)
QQ	legitimation cases, including change of name, plus any litigation tax if applicable	\$75.00	(a)(7)(I)
RR	petition to enter foreign judgment	\$75.00	(a)(7)(Q)
SS	in each new case filed, data entry fee	\$2.00	(d)
TT	entering each continuance	\$5.00	(e)

UU	For making copies as requested, other than for an original filing and other than when preparing a record upon appeal, the fee shall be fifty cents (50¢) per page	\$0.50	(i)(4)
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The Department of Finance and Administration has a preferred excel template for court clerk invoices. An instruction sheet is provided to assist with labeling the invoice. All elements are needed for proper payment.

Invoice should be emailed monthly to CSVendor.Invoices.DHS@tn.gov.

Please call 615-313-4880, option 4 for questions about invoicing.

Civil Actions

- Commencement of a Civil Action
- Summons, Service and Return
- Filing Documents
- Payment of Costs
- Lien Lis Pendens
- Issuing Subpoenas
- Setting Cases for Trial
- Entry of Judgment
- Exemplification (Pursuant to the Acts of Congress)

CIVIL ACTIONS

1. Commencement of a Civil Action:

All civil actions are commenced by filing a complaint with the court clerk¹. 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. Moreover, a number of rules in the Tennessee Rules of Civil Procedure refer to the date of the filing of the action:

- 1) Rule 4.01 requires the clerk upon the filing of the complaint to issue summons and cause service.
- 2) 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.”
- 3) 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.
- 4) 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).
- 5) Rule 56 permits a motion for summary judgment any time after the expiration of thirty days from the commencement of the 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 90 days, or is not served within 90 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.

2. Summons, Service and Return:

Rule 4.01, TRCP, provides that upon the filing of the complaint the clerk shall promptly 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.

Although there is no officially required form for a summons, Rule 4.02 provides what shall appear on the summons. The summons shall be issued in the name of the state of Tennessee, be dated and signed

¹ T.R.C.P. Rule 3.

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. T.C.A. §26-2-114 adds the requirement that all leading process include notice to the defendant that Tennessee law provides a ten-thousand-dollar debtor's equity interest personal property exemption from execution or seizure to satisfy a judgment.

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 clerk's workload. Other clerks may want to handle the chore themselves. Either position is appropriate under 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.

Note that Rule 4.01, requires the clerk to issue a summons "promptly" once a complaint is filed (unless there is a waiver under Rule 4.07). According to the 2004 Advisory Commission Comment, substituting the word "promptly" for the word "forthwith" is intended to emphasize that the clerk must issue the summons contemporaneously with, or soon after, the filing of the complaint. It goes on to say that because Rule 4.01 (1) requires the clerk to "promptly" issue the summons and deliver it for service, the clerk is not permitted to delay issuing the summons (or delivering it for service) at the request of the plaintiff or plaintiff's counsel. Paragraph 4.01(3) provides that if a plaintiff or counsel for plaintiff (including third-party plaintiffs) intentionally causes delay of prompt issuance of a summons or service of a summons, filing of the complaint (or third-party complaint) will not toll any applicable statutes of limitation or repose.

When process is served by mail, the original summons, properly endorsed, and the return receipt are filed with the clerk. [TRCP Rule 4.03 (2)] The 2000 Advisory Commission Comment to Rule 3, TRCP 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, TRCP.

The person serving the summons shall promptly make proof of service to the court and shall identify the person served and shall describe the manner of service. If a summons is not served within 90 days after its issuance, it shall be returned stating the reasons for failure to serve. The plaintiff may obtain new summonses from time to time, as provided in Rule 3, if any prior summons has been returned unserved or if any prior summons has not been served within 90 days of issuance² When a summons is not served or not returned within ninety 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.

Depending on local practice, in some counties a court may not notify attorneys of a summons which has been returned not served for whatever reason. In other counties it is up to the attorney to check on service. The clerk is not required to apprise the attorney regarding service. However, it is not a good practice to tell the plaintiff or plaintiff's attorney that there has been proper service by telephone. A better

² TRCP Rule 4.03(1).

practice would be to email or fax the returned summons and let the plaintiff or the plaintiff's attorney make that determination.

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.³ 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.⁴

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.⁵

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) that provides for publication by posting of local notice in lieu of newspaper publication.

A default judgment entered against a defendant who was never served with process deprives the defendant of the fundamental constitutional right of due process.⁶ Such a judgment is void and may be set aside under Rule 60.02(3) or by independent action.

3. Filing Documents:

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 as follows:

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.

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.⁷ TRCP Rule 5A sets forth the procedures for facsimile filing of papers. Each trial court office is required to have a dedicated telephone line for the clerk's facsimile machine. Each document fax filed shall be accompanied by the uniform cover sheet which is provided in the comment to this Rule. No facsimile filing shall exceed _____ pages, including the cover sheet and may not be split into multiple facsimile transmissions to avoid this page limitation. Rule 5A.02(4) sets forth documents that are not eligible for fax filing including

³ T.C.A. §21-1-203(5).

⁴ T.C.A. §21-1-204.

⁵ T.C.A. §20-1-205.

⁶ Tenn. Const. Art. I, §8; U.S. Const. Amend. V.

⁷ See Advisory Commission Comments to Rule 5, Tennessee Rules of Civil Procedure.

any pleading or similar document for which a filing fee and/or litigation tax must be paid including, without limitation, a complaint commencing a civil action, an appeal from the General Sessions Court to the Circuit Court, and an appeal to a trial court from an inferior tribunal, board or officer; a summons; a will or codicil to a will; a bond; or any pleading or document requiring an official seal; and a notice of appeal. The clerk is not required to notify the sender that the fax filing has been received or that it has not been received in its entirety.

Fax Filing – Rule 5A.02

The facsimile transmission of an original document which is received in the original document's entirety by the trial court clerk and filed by the clerk.

The Trial Court Clerk shall accept papers for filing by facsimile transmission as provided in this rule. The Trial Court Clerk shall maintain a dedicated telephone line for the Clerk's facsimile machine. Any document filed by facsimile transmission shall be accompanied by the uniform cover sheet.

The filing of the original document shall not be required after facsimile filing. The sender shall retain the original document in the sender's possession during the pendency of the action and shall produce such document upon request by the Court or any party to the action.

The following documents shall not be filed in the trial court by facsimile:

- Any pleading for which a filing fee or litigation tax must be paid (excluding the fax filing fee) including but not limited to a complaint commencing civil action, an appeal from the General Sessions Court to the Circuit Court, an appeal to a trial court from an inferior tribunal, board or officer
- A summons
- A will or codicil to a will, a bond or any pleading requiring an official seal
- A confidential document that the court previously ordered to be filed under seal
- A notice of appeal

No facsimile filing shall exceed fifty (50) pages in length, including the cover sheet, unless authorized by the court, absent authorization a facsimile transmission exceeding 50 pages including the cover sheet shall not be filed by the clerk. A facsimile filing may not be split into multiple transmissions to avoid the page limitation. All documents shall comply with all applicable rules of court

The Clerk is not required to notify the sender that the document has been received or that the document has not been received in its entirety. This provision shall not relieve the Clerk of any notice requirements imposed by law or by the Court.

SEE RULE 5A.03 regarding Effect of Facsimile Filing

RULE 5A.04 – Facsimile Service Charge

The sender of the facsimile shall pay to the trial court clerk a service charge for each filing in the amount of \$5.00 plus \$1.00 per page of the facsimile filing including the cover sheet. Payment shall be received by the trial clerk not later than 10 calendar days after the facsimile filing. This charge shall be paid by the sender and not be taxed as court costs with exception being if the sender is either a party who has been allowed to proceed on a pauper's oath or an attorney for such party, charges shall be taxed as court cost.

The question of whether or not a clerk should file documents received regardless of format, form or content is addressed in 15A Am. Jur.2d "Clerks of Court" §23 and 21 C.J.S. §251 as follows:

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 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 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 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 should file all legal papers tendered and as a rule are not concerned with their merits. (C.J.S. §21 Filing of Papers 251)

A 1998 Attorney General Opinion (98-210) 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 location 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.

4. Payment of Costs:

T.C.A. 20-12-205 provides that 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 court costs and taxes that may be awarded against the party, unless in cases and instances specially excepted. In 2005 the fee statute was amended. T.C.A 8-21-401 applies to courts except those with a charter form of government for which T.C.A. 8-21-409 applies. T.C.A. 8-21-401 states that except as otherwise provided by law, the costs provided in this section in civil cases are chargeable and may be collected at the time the services are requested from the clerk or other officer of the court; however, nothing in this section should be construed to limit the ability of a party to initiate a judicial proceeding by filing a pauper's oath. In actions for enforcement of contracts or breach of contract actions; injunctions; all torts, personal injury and property damage cases, including malpractice and wrongful death suits; employment discrimination suits; civil rights suits; tax disputes; special remedies; other property disputes; and any other type of actions not otherwise designated; and in workers compensation complaints, the attorney filing the action has the option to sign a cost bond, in lieu of the party paying the clerk's fees at the time services are requested. The statute provided that in these cases the clerk shall not refuse to file an action where the attorney has opted to sign a cost bond and if the clerk does so, all costs in that action will be forfeited by the clerk. Refer to T.C.A. 8-21-401 et seq. for specific fees charged in civil cases.

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*.⁸ 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(a) states 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.

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.

The uniform civil affidavit of indigency document is appended to Supreme Court Rule 29. In cases where payment of the clerk's fees would create a substantial hardship for a party, judges are encouraged to use the discretion provided in Rule 29 of the Supreme Court Rules to find that the party is indigent, even if that person does not meet the Legal Services Corporation's poverty guidelines.⁹ Courts across the state differ in the sequence of events when a litigant files a civil affidavit of indigency. Some clerks file the case prior to having the judge sign the indigency order. Other clerks hold the paperwork until the indigency order is signed then file the case.

5. Lien Lis Pendens:

When any person, in any court of record, by declaration, petition, bill or cross bill, seeks to fix a lien lis pendens on real estate, or any interest in real estate, situated in the county of the suit, in furtherance of the setting aside of a fraudulent conveyance, of subjection of property under return of nulla bona, tracing a trust fund, enforcing an equitable vendor's lien, or otherwise, that person shall file for record in the register's office of the county an abstract, certified by the clerk, containing the names of the parties to the suit, a description of the real estate effected, its ownership and a brief statement of the nature and amount of the lien sought to be filed.¹⁰

The purpose of the lis pendens lien is to warn all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment.

The person requesting the lien will bring the lien lis pendens document to the clerk. The clerk should verify that the information on the document is the same as that which appears in the petition, bill or cross bill. There will be a place on the form for the clerk to sign certifying that the lawsuit exists and that the information in the lawsuit is what appears in the lien. The clerk is not certifying that the information is correct, only that it is what appears in the lawsuit. The person filing the lien will need the original

⁸ T.C.A. §20-12-127 *et seq.*

⁹ T.C.A. §8-21-401.

¹⁰ T.C.A. §20-3-101.

document or a certified copy to record in the Register of Deeds office. Some attorney's request the original be returned to them, others do not. There is no guidance regarding whether the clerk should keep the original or a copy in the file.

6. Issuing Subpoenas:

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 TRCP 45, 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 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. 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.¹¹

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.

An effective subpoena for bank records will comply with the privacy and other provisions found in the Financial Records Privacy Act.¹² These statutes were designed to protect the bank which holds the records and to protect the privacy of the customer. In cases where financial records are delivered to the Clerk in response to the subpoena, they should be enclosed in a sealed envelope. If they are not in a separate sealed envelope, the clerk should seal these records when received with the title and number of the action, the custodian producing the records and the date of the subpoena inscribed on the sealed envelope. The sealed envelope should remain sealed until opened at the direction of the court in the hearing or otherwise by order.¹³

7. Setting Cases for Trial:

T.R.C.P 40 states that the courts shall provide by rule for the setting of cases for trial (a) without request of the parties but upon notice to the parties, or (b) upon request of a party and notice to other parties. Precedence shall be given to actions entitled thereto by any statute of the State of Tennessee. The Advisory Commission Comment says that the provisions of this Rule are directory only. The Commission felt that the circumstances as to the setting of local trial dockets are so varied that this matter must be left to the trial judges in each circuit or division. T.C.A. §20-8-101 et seq. provide general guidelines.

8. Entry of Judgment:

Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry: (1) the signatures of the judge and all parties or counsel, or (2) the signatures of the judge and one party or counsel with a certificate of counsel

¹¹ T.C.A. §18-1-107.

¹² T.C.A. §45-10-101 *et seq.*

¹³ T.C.A. §45-10-112.

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.

Following entry of judgment, the clerk shall make appropriate docket notations and shall copy the judgment on the minutes, for failure to do so will not affect validity of the entry of judgment. When requested by counsel or pro se parties, the clerk shall forthwith mail or deliver a copy of the entered judgment to all parties or counsel. If the clerk fails to forthwith mail or deliver, a party prejudiced by that failure may seek relief under Rule 60.

9. Exemplification (Pursuant to the Acts of Congress):

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.¹⁴ There is a form for this process which is often referred to as the “clerk and judge form.”

¹⁴ 28 United States Code Annotated §1738.

Conservatorship/Guardianship

- The Basics
- The Process of Appointment as conservator or Guardian
- The Order Appointment as Conservator or Guardian
- Example Forms

HANDBOOK FOR

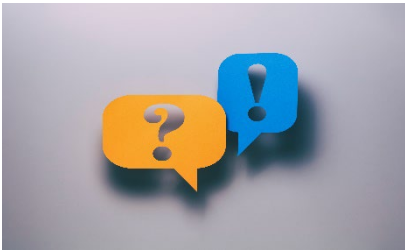
CONSERVATORSHIP/GUARDIANSHIP

PART I: The Filing of the Petition, the Court Hearing, the Order of Appointment, and the Letters of Conservatorship/Guardianship

CHANCERY COURT OF RUTHERFORD COUNTY, TENNESSEE

JOHN A. W. BRATCHER, CLERK AND MASTER

Revised: June 2022



INTRODUCTION: Why read this handbook?

You are interested in filing a Conservatorship for an adult or a Guardianship for a minor. Like many people, you may never have been a Conservator or a Guardian of someone else before, and that's why this guide was created. This Handbook has been designed by the Rutherford County Clerk and Master's Office as a helpful reference, and it will cover general information regarding filing a case with the Rutherford County Chancery Court. This Handbook is NOT intended to cover all the Tennessee laws governing Conservatorships and Guardianships. The Court highly suggests consulting with an attorney for any questions regarding the filing of the petition, your responsibilities as Conservator or Guardian, and if possible, consult with an attorney before taking any legal action on your own.

For an electronic version and further
information visit our website at:

www.rcchancery.com

CONTENTS

PAGE

CONSERVATORSHIPS/GUARDIANSHIPS: THE BASICS	1
THE PROCESS OF APPOINTMENT	7
THE ORDER OF APPOINTMENT.	9
PETITON FOR APPOINTMENT OF CONSERVATOR.	12
AFFIDAVIT OF PHYSICIAN.	19
PETITION FOR APPOINTMENT OF GUARDIAN OF A MINOR	21
ORDER APPOINTING GUARDIAN AD LITEM	26
ORDER APPOINTING ATTORNEY AD LITEM.	30
ORDER APPOINTING CONSERVATOR	31
ORDER APPOINTING GUARDIAN	34
INVENTORY	36
PROPERTY MANAGEMENT PLAN	38

1. CONSERVATORSHIPS AND GUARDIANSHIPS: The Basics

- Who is considered a person with a disability?

A “person with a disability” means any person eighteen (18) years of age or older determined by the Court to need partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, developmental disability, or other mental or physical incapacity.

- Who is the Respondent?

The person with a disability is often referred to as the Respondent in Conservatorships.

- What is a Conservator?

A Conservator is a person or entity appointed by the Court to provide partial or full supervision, protection and assistance to a Respondent. The person may be appointed as Conservator over the Respondent to manage medical affairs and activities of daily living; a Conservator of the property to manage the financial affairs of the respondent; or a Conservator over the person and property. The Court may appoint more than one person as Conservator, and the person are then called Co-Conservators.

- What is a Fiduciary?

A Fiduciary is a person who has been legally granted rights and powers to be exercised for the benefit of another person. For example, a personal representative of an estate is a Fiduciary; a Conservator of a person with a disability is a Fiduciary; a Guardian of a minor child is a Fiduciary; and a trustee of a trust is a Fiduciary.

- What is a Guardian?

A Guardian means a person or persons appointed by the Court to provide partial or full supervision, protection, and assistance of the person or property, or both, of a minor.

- What are the Responsibilities of a Conservator or Guardian?

As Conservator or Guardian, you have a double duty to both the Respondent and to the Court. You must always keep the best interests of the Respondent in mind. You must report to the Court regularly and be ready to answer any questions. Your responsibility as a Conservator or Guardian does not end until the court relieves you of your duties.

- Who may file for a Conservatorship or Guardianship?

Any person may file a petition for appointment of a Conservator or Guardian if he or she has knowledge of circumstances necessitating a Conservatorship or Guardianship. The persons having priority to be Conservator, subject always to the Court’s discretion, are: (1) the person(s) designated in writing by the person with the disability; (2) the person with the disability’s spouse;

(3) any child of the person with the disability; (4) closest relatives of the person with the disability; and (5) other persons.

- Where do I file for Conservatorship/Guardianship?

A Conservatorship or Guardianship must be filed in the county where the minor or individual with a disability resides. In Rutherford County, you can file a petition in the Clerk and Master's office located on the fifth floor of the Rutherford County Judicial Building, and you can also in the Probate Court located at the Rutherford County Clerk's office. In other counties, you can file a petition in any Probate Court or other court of appropriate jurisdiction in the county of residence of the alleged person with the disability or minor. If filing outside Rutherford County, check with the court clerk in the county where you intend to file to confirm which court hears Conservatorships and Guardianships. You are strongly advised to hire an attorney to assist you with this process.

- Will I have to have a hearing to be appointed as Guardian or Conservator?

Yes. A hearing must be set before the Judge before a Guardian or Conservator can be appointed.

- Is an examination by a doctor required?

Yes. To establish a Conservatorship, you must prove that an individual is disabled by a clear and convincing legal standard, which is usually accomplished through a sworn statement by a physician, psychologist, or senior psychological examiner. (See T.C.A § 34-3-105)

- Who pays the attorney fees to file a Guardianship or Conservatorship?

The Respondent's or minor's fund may be used to pay for attorney services, AFTER obtaining court approval. If the Respondent has very limited funds and/or receives public assistance, the Conservator may be able to qualify for free legal aid.

- In Conservatorship proceedings, who protects the rights of the person with a disability?

If the Conservatorship is already established, the Conservator is the one who protects the rights of the respondent. If the Conservatorship is being challenged by the individual with a disability, an Attorney ad Litem ("AAL") will be appointed to represent the person with a disability upon their request, recommendation of the Guardian ad Litem or if it appears to the Court to be necessary to protect the rights of the person with a disability.

- What is an Attorney ad Litem?

An Attorney ad Litem ("AAL") is an independent attorney the court may appoint to advocate on behalf of the person with the disability or the minor. The court shall appoint an Attorney ad Litem to represent the respondent on the respondent's request, upon the recommendation of the Guardian ad Litem or if it appears to the court to be necessary to protect the rights or interests of the respondent. The Attorney ad Litem shall be an advocate for the respondent in resisting the requested relief.

- What is a Guardian ad Litem?

A Guardian ad Litem (“GAL”) is a person the court may appoint to impartially investigate the facts of the case and make a report and recommendation to the Court on whether a fiduciary should be appointed and whether the proposed fiduciary is the appropriate person to serve. Unlike the AAL, the GAL is not an advocate for the Respondent or any other party to the case. The Guardian ad Litem serves as an agent of the Court and has a duty to report and recommend whether a Conservator/Guardian should be appointed and whether the proposed Conservator/Guardian is appropriate. (See T.C.A § 34-1-107)

- What are Letters of Conservatorship/Guardianship?

The appointment as a Conservator or Guardian becomes effective upon the entry of an order by the Court appointing a Conservator or Guardian, administration of the statutory oath, and the posting of a bond, if required. *The only effective evidence of appointment of a Conservator or Guardian are Letters of Guardianship or Conservatorship duly issued by the Clerk and Master.* The Letters of Conservatorship/Guardianship must recite the specific powers to be exercised by the Conservator/Guardian and the specific rights retained by the person with a disability; or the have the order attached with the same information. (See T.C.A § 34-1-129)

- How do I terminate or modify a Conservatorship or Guardianship?

A Conservator may be discharged or have Conservatorship duties modified when the Court determines by a preponderance of the evidence that the respondent is no longer disabled or that it is in the respondent’s best interest to do so. Death or reaching the age of majority does not automatically terminate the Conservatorship/Guardianship. The Court may also remove or modify a Conservator or Guardian on grounds the Conservator or Guardian has not performed as required by law or does not act in the respondent’s best interests.

- Can the person with a disability asks for the Conservatorship to be terminated or modified?

Yes. The Respondent or any interested person may petition the Court at any time for termination or modification of the Conservatorship. If the Respondent is making the request, it may be communicated by simply calling the Clerk’s Office or an informal letter. The Court may require a medical or psychological evaluation prior to a hearing on such a request or petition.

- Who supports the spouse or minor children of the person with a disability?

The appointment of a Conservator does not automatically terminate a person with the disability’s duty to support a spouse or minor children. The Court may establish the amount of financial support to which a spouse or children are entitled.

- Are Conservators and Guardians required to file any documents with the court?

Yes. A status report is required to be filed each year. Other documents such as an inventory, bond, accountings, and a property management plan will be required by the Conservator/Guardian unless the requirement is waived by the Judge. (See T.C.A § 34-1-111)

- Where do I locate the documents to file with the court?

Many of the forms that are necessary to file with the court may be found in this Handbook and on the Rutherford County Clerk and Master's website: www.rcchancery.com. Consult with your attorney if you are unsure how to proceed.

- When is the Annual Status Report due?

The first Annual Status report is due six (6) months after the date of your appointment as conservator, and it cannot be waived. An Annual Status report is due twelve (12) months from the date of the first Annual Status Report and every twelve (12) months thereafter. The status report form is a form you can download from the Clerk and Master's website (see above). The Conservator/Guardian is required to include with each status report a statement concerning the physical or mental condition of the respondent, which statement shall demonstrate to the court the need, or lack of need, for the continuation of the fiduciary's services.

- When are the Annual Accountings due?

An Interim Annual Accounting is due six (6) months after the date of appointment as Conservator/Guardian. Annual Accountings are due twelve (12) months from the date of appointment as Conservator/Guardian and every twelve (12) months thereafter.

- When is the Inventory due?

The Inventory is due sixty (60) days from the date of your appointment as Conservator/Guardian unless it was separately stated as an Inventory in the petition.

- What is the difference between a Property Management Plan and an Inventory?

The Property Management Plan is a Court approved budget that tells the Court how the Conservator/Guardian will manage the respondent's assets, pay for the respondent's needs, and how the Conservator/Guardian plans on investing any remaining assets. If not approved at the time of appointment as Conservator/Guardian, the Property Management Plan must be filed within sixty (60) days of the order of appointment. The Inventory is a complete list of the respondent's personal property, real property, and income. The inventory tells the Court all that the Respondent or minor possesses.

- Who do I contact if I need help completing the accounting?

Contact your attorney if you need assistance with your accounting. The accounting forms can be found in Part II of this Handbook, and on the Clerk and Master's website at www.rcchancery.com.

- What is a Conservator/Guardian surety bond?

A (Conservator/Guardian) surety bond provides financial compensation to the Conservatorship/Guardian estate should the Conservator/Guardian fail to properly exercise their financial fiduciary duty. The cost of the premium for the bond is paid out of the assets of the

Respondent. The Court sets the bond amount based on the approximate value of the property and annual income of the Respondent. The bond amount can increase or decrease over time if the assets of the estate change.

- How does the court oversee the activities of a Conservator/Guardian?

Certain transactions of the Conservator or Guardian may only be taken with specific court approval. Conservator fees and attorney's fees are also subject to court approval. Always contact your attorney and the Clerk's office if you have any questions regarding seeking court approval before you spend the Respondent's or the minor's money.

- What rights does the Respondent have once a Petition to appoint a Conservator is filed?

The Respondent has a right to demand a hearing on the issue of disability, present evidence, testify, and choose witnesses, and attend any hearings. The Respondent may request an Attorney ad Litem be appointed to advocate for his/her interests. The Respondent has a right to appeal the final decision on the Petition, and request a protective order of the Court for Respondent's financial and/or health information to be protected, if not already protected under T.C.A § 34-3-105(f).

2. THE PROCESS OF APPOINTMENT AS CONSERVATOR OR GUARDIAN

T. C. A. §34-3-104

- What is the first step to filing a Conservatorship or Guardianship?

A Petition to appoint a Conservator or a Guardian is filed in the county where the individual resides. A sample Petition is included with this Handbook, and the Court suggests speaking with an attorney regarding help filling out and preparing the Petition to file (See T. C. A. §34-3-104). The Rutherford County Clerk and Master's office cannot provide you with any legal advice.

- How much is the court filing fee?

The filing fee is \$324.50, and the fee is made payable to the Rutherford County Clerk and Master's office by the person filing the Petition. Once the Conservatorship or Guardianship is established, the Petitioner may ask the court for reimbursement from the Respondent's estate for the filing fee.

- What happens after the Petition is filed?

You will work with the Clerk to schedule a hearing date, no less than five days and no more than sixty days, from the date the Petition is filed with the Clerk. In a Conservatorship case, the Clerk will issue a Summons to the Respondent that will be served by a Guardian ad Litem, if one shall be appointed. If there is no Guardian ad Litem, the Petitioner will serve the Respondent with the Summons and a Notice of Hearing prepared by the Clerk of the court's hearing date. The Clerk will then notify all the parties listed on the Petition as Next of Kin with a Notice of Hearing by Certified Mail.

- What happens if the Respondent contests the Conservatorship when he/she is served?

The Court is obligated to appoint an Attorney ad Litem. The Attorney ad Litem is a lawyer appointed to represent the individual and advocate for his/her wishes and best interests.

- What happens at the hearing?

The hearing is held at the courthouse before the Judge, and the Petitioner will present evidence on the need for a Conservator or Guardian. If appointed, the Guardian ad Litem and Attorney ad Litem will also appear at the hearing. The Respondent has a right to be present and to be heard if he/she desires. The Judge will weigh evidence and make a determination of the need for a Conservator or Guardian and will sign an Order appointing a Conservator or Guardian.



3. THE ORDER OF APPOINTMENT AS CONSERVATOR OR GUARDIAN

T. C. A. §34-3-107 and T. C. A. §34-2-105

- Who prepares the Order for the Judge to sign?

If the Court determines a Conservator or Guardian is needed, the attorney representing the Petitioner will prepare the Order for the Judge's signature. If there is no attorney, and you are representing yourself, you will need to prepare the Order to reflect the ruling for the Judge to sign.

- What must be included in the Order Appointing a Conservator (T. C. A. §34-3-107)?

The Order shall name the Conservator or Co-Conservators, list the powers removed from the Respondent and those to be vested in the Conservator, as well as, any limitations in the Conservator's powers. If the Conservator will be managing the Respondent's finances and property, the Order must set the amount of the Conservator's bond, (unless waived by the Judge), approval of the Property Management Plan, and state if Annual Accountings are due.

The rights of the Conservator may include, but are not limited to:

- (A) The right to give, withhold, or withdraw consent and make other informed decisions relative to medical and mental examinations and treatment;*
- (B) The right to make end of life decisions:*
 - (i) To consent, withhold, or withdraw consent for the entry of a "do not resuscitate" order or the application of any heroic measures or medical procedures intended solely to sustain life and other medications; and*
 - (ii) To consent or withhold consent concerning the withholding or withdrawal of artificially provided food, water, or other nourishment or fluids;*
- (C) The right to consent to admission to hospitalization, and to be discharged or transferred to a residential setting, group home, or other facility for additional care and treatment;*
- (D) The right to consent to participate in activities and therapies which are reasonable and necessary for the habilitation of the respondent;*
- (E) The right to consent or withhold consent to any residential or custodial placement;*
- (F) The power to give, receive, release, or authorize disclosures of confidential information;*
- (G) The right to apply for benefits, public and private, for which the person with a disability may be eligible;*
- (H) The right to dispose of personal property and real property subject to statutory and judicial constraints;*
- (I) The right to determine whether or not the respondent may utilize a Tennessee driver license for the purpose of driving;*
- (J) The Respondent shall have the right to make everyday purchases for her own personal needs including food, clothing, and entertainment within the parameters set forth in this order;*
- (K) The right to enter into contractual relationships;*
- (L) The right to execute instruments of legal significance;*
- (M) The right to pay the Respondent's bills and protect and invest the Respondent's income and assets;*
- (N) The right to prosecute and defend lawsuits;*
- (O) The right to execute, on behalf of the respondent, any and all documents to carry out the authority vested above; and*
- (P) The right to communication, visitation, or interaction with other persons, including the right to receive visitors, telephone calls, or personal mail.*

- What must be included in the Order Appointing a Guardian? (T. C. A. §34-2-105)

The Order to Appoint a Guardian for a Minor shall include the name of the Guardian(s). If the Guardian is to manage the minor's property, the Order shall set the amount of the Guardian's bond, unless waived by the Court, and approval of the Property Management Plan. The Order shall state any other authority or direction the Court determines is appropriate to properly care for the person and property of the Minor.

- What happens after the Order is signed and the bond (if required) is filed with the Court?

You will need to come into the Clerk's office to have the Letters of Conservatorship/Guardianship issued. This is a separate document from the Order, and

the Letters of Conservatorship/Guardianship are evidence of the authority to act as Conservator or a Guardian. *Please read your letters very carefully.* The Clerk will then give you a copy of the Conservatorship and Guardianship Handbook and notify you of the timelines for filing your required Annual Accountings or Annual Status Reports with the Court.

- When would the Letters of Conservatorship/Guardianship be used?

You will need the Letters of Conservatorship/Guardianship to set up or transfer bank accounts, to apply for Social Security or become the Social Security Representative Payee for benefits. You may also be asked to present your Letters of Conservatorship/Guardianship to medical professionals or any educational/assistance program in which the Respondent is enrolled.



****EXAMPLE****

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
RESPONDENT

CASE NO. _____

PETITION FOR APPOINTMENT OF CONSERVATOR
T.C.A. § 34-3-104

TO THE HONORABLE CHANCELLOR OF THE CHANCERY COURT OF RUTHERFORD COUNTY, TENNESSEE:

Comes now the Petitioner, [*name of Petitioner*], and files this petition for the appointment of a conservator of [*name of Respondent*], and would show to the Court as follows:

1. The name, date of birth, residence and mailing address of the Respondent is as follows:

Name: _____
Date of Birth: _____
Residence: _____
Mailing address: _____

2. Upon information and belief, the Petitioner avers that the Respondent is a person who by reason of advanced age and/or mental infirmity is unable to manage his/her own affairs. Specifically, [*include case specific issues*] more particularly described in the sworn medical examination report of his/her treating physician which is attached hereto.

3. The name, age, residence and mailing address, relationship of the Petitioner, and statement of any felony or misdemeanor convictions of the Petitioner, if any, is as follows:

Name: _____
Age: _____
Residence: _____
Mailing address: _____
Relationship to respondent: _____

A statement of any felony or misdemeanor convictions of the Petitioner, if any:

4. The Petitioner is seeking to have himself/herself appointed Conservator of the Respondent. *[In the event that the proposed Conservator and the Petitioner are not the same person, then the name, age, mailing address, relationship to the Respondent, and statement of any felony or misdemeanor convictions, if any, should be included in this paragraph. Also, the proposed Conservator should sign a statement acknowledging that he or she is aware of the petition being filed and his/her willingness to serve as conservator.]*

Attached to this Petition are current copies of the following reports on the Proposed Conservator:

- a. A search of the department of health's registry of persons who have abused, neglected, or misappropriated the property of vulnerable persons, established by tile 68, chapter 11, part 10;
- b. A search of the national sex offender registry maintained by the United State Department of Justice.

5. The name, mailing address, and relationship of the closest relative(s) of the Respondent are as follows:

Name: _____
Mailing address: _____
Relationship to Respondent: _____

[Be sure to include any person or institution having care or custody of the Respondent, or with whom the Respondent is living. If the Respondent has no living spouse, child, parent, or sibling, then the Petition shall so state and more remote relatives are not to be listed. If any of the children of the Respondent are deceased, and the Respondent has surviving children,

then the surviving children, even if they are minors, should be listed since they are included in the definition of “closest relatives of the Respondent” according to the Tennessee law of intestate succession.]

6. *[Describe here the facts supporting the Petitioner’s allegation that the Respondent is in need of a Conservator.]*

7. The Respondent’s treating physician or psychologist’s name is *[doctor’s name and location]*. A copy of *[doctor’s, psychologist’s, or senior psychological examiner’s name]* sworn medical examination report is attached to this Petition *[or will be filed before the hearing]* and incorporated herein by reference. *[If the Respondent has not been examined within ninety (90) days prior to the filing of the Petition, or if he/she cannot be examined or refuses to be voluntarily examined, the Petitioner can request the Court to enter an Order for the Respondent to submit to an examination by a physician, who is identified in the Petition as the Respondent’s physician, or where appropriate, a psychologist selected by the Court.]*

8. The rights of the Respondent to be removed from the Respondent and transferred to the Conservator are _____. *[The rights the court may remove may include, but are not limited to, the right to vote, dispose of property, execute instruments, make purchases, enter into contractual relationships, hold a valid Tennessee driver’s license, give or refuse consent to medical and mental examinations and treatment or hospitalizations, do any other act of legal significance the Court deems necessary or advisable.]*

9. *[If the Petition is requesting the Conservator to manage the property of the Respondent, this Petition shall also contain all the financial information that is known to the Petitioner. Include a list of all of the property of the Respondent along with the approximate fair value. Also, include a list of the source, amount, and frequency of Respondent’s income. These may include, but are not limited to, any social security, pension or retirement payments,*

annuity payments, disability payments, rental income, and interest on investments or dividends.]

The list of the usual monthly expenses of the Respondent are as follows:

_____.

[These may include, but are not limited to, mortgage or rent payments, costs of care at nursing home, utility bills, groceries, taxes and insurance, clothing and incidentals, or past due medical bills.]

10. *[Describe how the income and expenditures have been handled up to this point, either by the Respondent or someone acting on their behalf, and why this arrangement is no longer feasible. Include a description of the proposed plan for the management of the Respondent's property. If the financial information about the Respondent is unknown at the time of filing the Petition, a request shall be made for the Court to enter an Order authorizing the Petitioner to investigate the Respondent's property. A request can also be made for a Guardian ad Litem, Conservator, or Attorney ad Litem to be appointed with specific expertise in matters the Respondent may be facing.]*

11. *[Describe the specific rights being requested to be assumed by Petitioner, including control of assets and decision-making capabilities, and the specific powers to be retained by the person with the disability. Also included should be information regarding the living arrangements of the Respondent and any changes to that as requested, any changes in the current investment selections, and the proposed disposal of any assets and the reason therefore. A separate property management plan should be submitted for approval unless specifically waived by the Court.]*

WHEREFORE, PREMISES CONSIDERED, PETITIONER PRAYS:

1. That proper notice and process be served upon the Respondent, [*Respondent's name*], by the Guardian ad Litem [*if asking for Guardian ad Litem to be waived by the Court, then Petitioner will be responsible for service to the Respondent*] in accordance with T. C. A. §34-1-108, and that notice by certified mail with return receipt requested be given to the closest relatives and upon the person or institution, if any, having care and custody of the Respondent or with whom the respondent is living in accordance with T. C. A. §34-1-106;

2. That this Court appoint [*The Petitioner may ask the Court to waive or appoint*] a Guardian ad Litem to investigate the facts and report to the court as instructed by the statute and any order of the court; pursuant to T.C.A. § 34-1-107. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party;

3. The Petitioner, pursuant to T.C.A. § 34-3-104 (10), requests a Guardian ad Litem with specific experience or expertise in this matter as it is warranted by the circumstances. [*If Petitioner is asking for a Guardian ad Litem to be appointed.*]

4. That at a hearing of this cause, the Court appoint the Petitioner as Conservator of the person and property of the Respondent, [*Respondent's name*], upon furnishing bond in the amount of \$ _____, [*The Petitioner may ask the Court to waive the bond requirement*]; pursuant to T. C. A. § 34-1-105;

5. That this Court approve the Property Management Plan and authorize the Petitioner to expend such funds from the Respondent's assets and income as may be appropriate under the circumstances; pursuant to T. C. A. §§ 34-1-110 and 34-1-115;

6. That the Petitioner have such other and further general relief to which he may be entitled.

[NAME OF PROPOSED CONSERVATOR]

ATTORNEY INFORMATION

STATE OF TENNESSEE
COUNTY OF RUTHERFORD

I, _____, state under oath that the facts set out in the foregoing petition are true to the best of my knowledge, information and belief.

[NAME OF PROPOSED CONSERVATOR]

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 20____.

NOTARY PUBLIC

My commission Expires:

****EXAMPLE****

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
MINOR / RESPONDENT

CASE NO. _____

AFFIDAVIT OF PHYSICIAN
T.C.A. § 34-3-105

STATE OF TENNESSEE
COUNTY OF RUTHERFORD

I, the undersigned physician (or psychologist or senior psychological examiner) state under oath as follows:

1. I am a duly licensed and practicing physician (or psychologist or senior psychological examiner) engaged in the active practice of medicine in Rutherford County, Tennessee.

2. I am personally familiar with the medical history and current condition of *[Respondent's name]*, and have personally examined him/her within ninety (90) days hereof. His/her history, current condition, and a summary of his/her disability is explained more fully in the medical report which was prepared under my supervision and which is attached to this affidavit and incorporated herein by reference.

3. I am of the opinion that *[Respondent's name]* is a disabled person and is unable to manage his/her personal and financial affairs. I recommend that a conservator be appointed for those purposes.

This the ____ day of _____, 20____.

[PHYSICIAN'S NAME]

SWORN TO AND SUBSCRIBED before me this the _____ day of

_____, 20____.

NOTARY PUBLIC

My commission expires:

*NOTE: T. C. A. §34-3-105 states
that the affidavit may be signed by a
“physician, or where appropriate, a
psychologist, or senior psychological
examiner.”*

****EXAMPLE****

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
MINOR

CASE NO. _____

PETITION FOR APPOINTMENT OF GUARDIAN OF A MINOR
T.C.A. § 34-2-104

TO THE HONORABLE CHANCELLOR OF THE CHANCERY COURT OF RUTHERFORD
COUNTY, TENNESSEE:

Comes now the Petitioner, [*name of Petitioner*], and files this petition for the appointment
of a Guardian of [*name of Minor child*], and would show to the Court as follows:

1. The name, date of birth, residence and mailing address of the Minor Child is as
follows:

Name: _____
Date of Birth: _____
Residence: _____
Mailing address: _____

The name, age, residence, mailing address and relationship of the Petitioner is as
follows:

Name: _____
Date of Birth: _____
Residence: _____
Mailing Address: _____
Relationship to Minor Child: _____

[If the proposed Guardian is someone other than the Petitioner, list the name, age,

mailing address, and relationship of the proposed Guardian, and include a statement signed by the proposed Guardian acknowledging awareness of the Petition and willingness to serve.]

2. The name, mailing address, and relationship of the closest relative(s) of the Minor Child are as follows:

Name: _____

Mailing address: _____

Relationship to Respondent: _____

[Be sure to include any person or institution having care or custody of the Minor Child, or with whom the Minor Child is living. If the Respondent has no living parent or sibling, then the Petition shall so state and more remote relatives are not to be listed.]

3. *[Explain here the reason(s) for seeking appointment of a Guardian.]*

4. *[If the Petition is requesting the Guardian to manage the property of the Respondent, this Petition shall also contain all the financial information that is known to the Petitioner. Include a list of all the property of the Respondent along with the approximate fair value. Also, include a list of the source, amount, and frequency of Respondent's income. These may include, but are not limited to, any social security, pension or retirement payments, annuity payments, disability payments, rental income, and interest on investments or dividends.]*

5. The list of the usual monthly expenses of the Respondent are as follows:

_____.

6. *[These may include, but are not limited to, mortgage or rent payments, costs of care, utility bills, groceries, taxes and insurance, clothing and incidentals, or past due medical bills.]*

7. The list of the usual monthly expenses of the Respondent are as follows:

_____.

[These may include, but are not limited to, mortgage or rent payments, costs of care at nursing

home, utility bills, groceries, taxes and insurance, clothing and incidentals, or past due medical bills.]

8. *[Describe how the income and expenditures have been handled up to this point, either by the Respondent or someone acting on their behalf, and why this arrangement is no longer feasible. Include a description of the proposed plan for the management of the Respondent's property if a Guardian is appointed.]*

9. *[If the financial information about the minor is unknown to the Petitioner, you may request here for the Court to enter an Order authorizing the Petitioner to investigate the minor's property.]*

WHEREFORE, PREMISES CONSIDERED, PETITIONER PRAYS:

7. That notice by certified mail with return receipt requested be given to the closest relatives and upon the person or institution, if any, having care and custody of the Respondent or with whom the respondent is living in accordance with T. C. A. §34-1-106;

8. That this Court appoint *[The Petitioner may ask the Court to waive or appoint]* a Guardian ad Litem to investigate the facts and report to the court as instructed by the statute and any order of the court; pursuant to T.C.A. § 34-1-107. The Guardian ad Litem serves as an agent of the court, and is not an advocate for the respondent or any other party;

9. That at a hearing of this cause, the Court appoint the Petitioner as Guardian of the person and property of the Respondent, *[Respondent's name]*, upon furnishing bond in the amount of \$ _____, *[The Petitioner may ask the Court to waive the bond requirement]*; pursuant to T. C. A. § 34-1-105;

10. That this Court approve the Property Management Plan and authorize the Petitioner to expend such funds from the Respondent's assets and income as may be appropriate under the circumstances; pursuant to T. C. A. §§ 34-1-110 and 34-1-115;

11. That the Petitioner have such other and further general relief to which he may be entitled.

[NAME OF PROPOSED GUARDIAN]

ATTORNEY INFORMATION

STATE OF TENNESSEE
COUNTY OF RUTHERFORD

I, _____, state under oath that the facts set out in the foregoing petition are true to the best of my knowledge, information and belief.

[NAME OF PROPOSED GUARDIAN]

SWORN TO AND SUBSCRIBED before me this the _____ day of _____, 20____.

NOTARY PUBLIC

My commission Expires:

EXAMPLE

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
Respondent

CASE NO. _____

ORDER APPOINTING GUARDIAN AD LITEM

This cause came on to be heard upon the sworn petition of the Petitioner(s), filed herein for the appointment of a Conservator or Guardian of the Respondent; and upon the entire record in this cause from all of which it appearing to the Court that a guardian ad litem should be appointed as an agent of the Court to impartially investigate the facts and make a report and recommendation to the Court,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That _____, a lawyer licensed to practice in the State of Tennessee, be and is hereby appointed guardian ad litem in this cause;
2. That the said Guardian Ad Litem shall investigate the facts and report to the Court as instructed by statute (T.C.A §37-1-107), as well as recommendations to the Court as to whether a fiduciary should be appointed for the respondent, whether the proposed fiduciary is the appropriate person to be appointed;
3. That the said Guardian Ad Litem shall investigate the physical and mental capabilities of the respondent and shall include:
 - (i) An in-person interview with the respondent;
 - (ii) A review of the sworn report of the report of the physician, psychologist, or senior psychological examiner to verify

that the sworn statement contains; (a) a detailed description of the respondent's physical or mental conditions or both that may render the respondent a person with a disability; and (b) a detailed description of how the respondent's physical or mental conditions or both may impair the respondent's ability to function normally.

4. That the said guardian ad litem shall investigate;

- (i)** the nature and extent of the respondent's property if applicable;
- (ii)** the financial capabilities and integrity of the proposed fiduciary if applicable. In evaluating the financial capabilities and integrity of the proposed fiduciary, the guardian ad litem may take such actions as directed by the court and as the guardian ad litem deems necessary, which may include but are not limited to:
 - (a)** Obtaining and reviewing the proposed fiduciary's credit report;
 - (b)** Inquiring into whether and to what extent the proposed fiduciary has previous experience in managing assets of the same or similar type and value as the respondent's assets;
 - (c)** Inquiring into how the proposed fiduciary plans to manage the respondent's assets;
 - (d)** Inquiring into how the proposed fiduciary has previously borrowed funds from the respondent or received any financial assistance or benefits from the respondents; and

(e) Interview any persons with knowledge and review any documents pertinent to the financial capabilities and integrity of the proposed fiduciary.

5. That the said Guardian Ad Litem be and is hereby granted access to the records of the Respondent in any financial institution and to review any medical records pertaining to the Respondent; and that the Guardian Ad Litem shall be permitted to discuss the Respondent's physical and mental condition with any physician, psychologist, or other health care provider who may have pertinent information;
6. That the Guardian Ad Litem owes a duty to the Court to impartially investigate to determine the facts and report the facts to the Court. The Guardian Ad Litem is not an advocate for the Respondent, and
7. That the Guardian Ad Litem shall make a written report to the court at least three (3) days prior to the date set for hearing the matter. The report shall specifically state whether the respondent wants to contest (i) the need for a fiduciary, (ii) merely the person to be the fiduciary, or (iii) neither. If the respondent wants to contest any portion of the proceeding and the guardian ad litem's opinion is that there should be a fiduciary appointed, the guardian ad litem shall identify the adversary counsel or indicate there is none and request the appointment of an attorney ad litem. If the Guardian Ad Litem recommends that a fiduciary should be appointed, he/she shall recommend whether the proposed fiduciary should be appointed or if someone else, identified by the Guardian Ad Litem.

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE:
THE CONSERVATORSHIP OF

CASE NO. _____

ORDER APPOINTING ATTORNEY AD LITEM

This cause came on to be heard upon the sworn petition of the Petitioner(s), filed herein for the emergency appointment of a Conservator or Guardian of the Respondent; and upon the entire record in this cause from all of which it appearing to the Court that an Attorney ad Litem should be appointed to represent the Respondent in the proceeding pursuant to T.C.A §34-1-132.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That _____, a lawyer licensed to practice in the State of Tennessee, be and is hereby appointed Attorney ad Litem in this cause

EXAMPLE – TO BE SUBMITTED AT COURT HEARING

IN THE CHANCERY COURT IN RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
RESPONDENT

CASE NO. _____

This order, without letters of conservatorship, is not effective evidence of conservatorship authority. (T.C.A. § 34-1-109 (a).)

ORDER APPOINTING CONSERVATOR
T.C.A. §§ 34-3-107

This cause came on to be heard upon the sworn Petition of Name of Petitioner, the Report of the Guardian Ad Litem, the medical report of (Name of Physician or Psychologist or Senior Psychological Examiner), the sworn testimony of the Petitioner and the Guardian Ad Litem on (Date) and representations of counsel, the Court finds the following:

- A.** The Respondent has been properly served.
- B.** All persons entitled to notice of this proceeding have been properly notified.
- C.** The Respondent is a resident of Rutherford County, Tennessee.
- D.** The Guardian Ad Litem has filed a report recommending appointment of a Fiduciary for the person and property of the respondent; appointment of the proposed Fiduciary.
- E.** The Respondent is a disabled person; owns property requiring supervision; and should have a conservator appointed.
- F.** The proposed Fiduciary is a fit and proper person to be named conservator of the person and property of the Respondent.
- G.** The property management plan proposed by the Fiduciary is acceptable and should be adopted (if waived, put here that the requirement for a property management plan is waived.)
- H.** (If bond is waived) It is in the best interests of the Respondent that bond for the Fiduciary be waived because (state the reason). (See T.C.A. § 34-1-105.)
- I.** The Conservator shall file timely Annual Accountings with the Court. (If Annual Accountings are waived, put that timely Annual Status Reports shall be filed.)

Based on these findings, the Court Orders that:

1. On making the required bond, Conservator's name is appointed Conservator of the person and property of name or the Respondent, and Letters of Conservatorship shall be issued to evidence this appointment by the Clerk of the Court.

2. Bond is set in the penal sum of \$_____ (or bond is waived.)

3. The rights of the Respondent to be transferred to the Conservator are as follows:
(List the powers removed from the respondent and those to be vested in the Conservator. To the extent not specifically removed, the respondent shall retain and shall exercise all of the powers of a person without a disability.) T.C.A. §34-3-107

4. The Fiduciary is authorized to invest the Respondent's assets as described in and pay the expenses enumerated in the property management plan which is incorporated by reference herein.

5. The Fiduciary shall not spend the Respondent's assets or income for any purpose not enumerated in the property management plan, shall not sell any asset of the Respondent without prior Court approval and shall not change the investment of the Respondent's assets without prior Court approval except to the extent described in the approved property management plan.

6. The fee of the Guardian Ad Litem is set at \$_____.

7. The fee of the attorney(s) for the Petitioner is set at \$_____.

8. The fees of the Guardian Ad Litem and attorney(s) together with the cost of these proceedings shall be paid from the assets of the Respondent.

9. The costs of this cause should be taxed to the estate for which execution may issue if necessary.

(Add additional provisions as may be needed to deal with specific circumstances of the Respondent.)

APPROVED FOR ENTRY:

Petitioner's name and signature
Murfreesboro, TN 37130

EXAMPLE – TO BE SUBMITTED AT COURT HEARING

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
MINOR / RESPONDENT

CASE NO. _____

This order, without letters of guardianship is not effective evidence of guardianship authority.
T.C.A. § 34-1-109 (a).

ORDER APPOINTING GUARDIAN

This cause came on to be heard upon the sworn petition of Name of Petitioner, upon the testimony of Name of Petitioner in open Court, and upon the entire record of this cause, from all of which it appears to the Court that (state the facts of the case that warrant a Guardian to be appointed for the minor child).

It further appears to the Court that the Petitioner, _____, is a fit and proper person to serve as the guardian of the person and property (if the minor does have assets) of the minor Respondent.

It further appears to the Court that this property management plan is reasonable and should be approved (if property management plan is required). Further, the Petitioner should

be prohibited from selling any of the minor Respondent's property without Court approval.

(State here if bond is required and the amount of the bond. If bond is waived, state the bond is waived.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. That _____ be and he is hereby appointed Guardian with (or without) bond of William Smith, minor;

2. The Clerk shall issue Letters of Guardianship to Name of Guardian;

3. That the proposed property management plan be and the same is hereby approved (if required);

4. The Guardian shall file timely annual accountings with the Court (if accountings are waived, or the Guardian is only over the person since the minor does not have any assets, put that timely annual status reports shall be filed).

5. That the Petitioner be and is hereby authorized to (specifically list all authority and rights of the Guardian that the Court determined is appropriate for the care of the person and property of the minor).

4. The costs of this cause are charged to the estate for which execution may issue if necessary.

APPROVED FOR ENTRY:

Name and Signature of Petitioner
Murfreesboro, TN 37130

IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE

IN RE: _____
MINOR / RESPONDENT

CASE NO. _____

Fiduciary

INVENTORY
T.C.A. § 34-1-110

The undersigned Guardian or Conservator, under oath, submits the following inventory of the estate of the minor or disabled person for whom I have been appointed:

1. The following is a list of the Property:

DESCRIPTION OF ASSET

FAIR MARKET VALUE

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. The following is a list of the source, amount, and frequency of each item of income, pension, social security benefit or other revenue of the minor or person with a disability:

INVENTORY OF INCOME

SOURCE

AMOUNT

FREQUENCY

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I, _____, Conservator/Guardian for Respondent, _____,
solemnly swear and affirm that the statements provided herein are true and correct to the best of my
knowledge and belief.

Respectfully submitted, this _____ day of _____, 20____.

Conservator/Guardian

Sworn to and subscribed before me, this the _____ day of _____, 20____.

Notary Public/Deputy Clerk

Commission Expires:_____

IN THE CHANCERY COURT OF RUTHERFORD COUNTY, TENNESSEE

AT MURFREESBORO

IN THE MATTER OF:

Case No: _____

Respondent,

PROPERTY MANAGEMENT PLAN

- REVISED (check if modifying a previously approved Property Management Plan

Pursuant to T.C.A. § 34-1-115, a Property Management Plan must be approved by the Court for investments over \$25,000.00. This plan must be amended and approved by the Court when changes are made. The Conservator/Guardian shall review the plan annually when accountings are due for filing and make the necessary changes on an Amended Property Management Plan to be submitted along with the annual accounting.

I, _____, the Conservator/Guardian of the Property for the Respondent,

_____, submit the following Property Management Plan pursuant to T.C.A. § 34-1-115:

1. Depository Accounts

PRIMARY CHECKING ACCOUNT (it is suggested that you operate from only 1 account):

(Bank)

(Last 4 digits of account #)

List ALL depository accounts (money markets, savings, CD's, etc.):

2. Investment/Brokerage Accounts

List ALL brokerage or investment accounts (annuities, stocks, bonds, Retirement accounts, IRA's, etc.):

Any change from one type of investment to another investment type requires court approval, and an Amended Property Management Plan must be filed once any changes are allowed by the court.

3. Life Insurance Policies

List any life insurance policies for which the Respondent is the policy owner, the insured, and/or the beneficiary, along with the company name, benefit amount, policy type, policy number, and current cash surrender value:

4. Income and Expenses

List the current monthly income sources of the Respondent:

\$ _____ from Social Security.
\$ _____ from pension/retirement.
\$ _____ from investment accounts.
\$ _____ from rental properties.
\$ _____ from trust income.
\$ _____ (other not specified)

\$ _____ TOTAL INCOME

List the current monthly expenses of the Respondent:

- \$_____ for allowance (cash/personal spending).
- \$_____ for burial/pre-need policy.
- \$_____ for caregiver services/home health care.
- \$_____ for cable/internet/phone services.
- \$_____ for clothing needs.
- \$_____ for court approved Conservator fees.
- \$_____ gifts (birthday, holidays).
- \$_____ for court approved credit card payments.
- \$_____ for food/dining/groceries/toiletries.
- \$_____ for home maintenance/supplies.
- \$_____ for housing (mortgage/rent/care facility).
- \$_____ for insurance premiums (medical/life/property).
- \$_____ for loan payments owed by Respondent.
- \$_____ for medical expenses (co-pays, dental, physical therapy).
- \$_____ for pet/animal expenses.
- \$_____ for prescriptions and medical supplies.
- \$_____ for professional services (accountant, attorney). *All attorney fees must be approved by the Court.*
- \$_____ for taxes (property, income).
- \$_____ for transportation services.
- \$_____ for tuition/school supplies.
- \$_____ for utilities (electric/gas/water).
- \$_____ for vacation expenses.
- \$_____ for vehicles expenses (maintenance/gas/tags).
- \$_____ for vehicle insurance.

\$_____ for vehicle payments.

\$_____ (other not specified).

\$_____ TOTAL EXPENSES

5. Real Property

List the addresses of all real property the Respondent may have an interest in and state how the property is currently held. State "None" if there is no real property:

If you plan to sell or encumber any of the Respondent's property during the period this Property Management Plan is in effect, you MUST first seek court approval to sell real property. An Amended Property Management Plan will need to be filed after the sale takes place.

6. Personal Property

List the status of the Respondent's personal property listed in the Inventory:

List the model and location of any vehicles owned by the Respondent:

7. Trust information

Provide specific detail as to any trust benefits the Respondent may be receiving or may be

entitled to, including the name of the Trustee, the current value of the Trust assets, and the purpose of the trust, as a beneficiary or otherwise:

8. Burial and Pre-Need Plan:

Provide specific details as to any burial or pre-need funeral plan in which the Respondent has interest, including the company name and funeral home:

9. Revisions from Last Property Management Plan:

Detail any revisions/changes from the last Property Management Plan (i.e., opening/closing new accounts, increases/decreases in expenses, changes in investments, etc.):

I, _____, Conservator/Guardian for Respondent, _____, solemnly swear and affirm that the statements provided herein are true and correct to the best of my knowledge and belief.

Respectfully submitted, this _____ day of _____, 20____.

Conservator/Guardian

Sworn to and subscribed before me, this the _____ day of _____, 20____.

Notary Public/Deputy Clerk

Commission Expires: _____

Criminal

- Arraignment
- Attorney Claim Forms
- Bail Bonds
- Court Action Report
- Criminal Capias
- Criminal Cost Bills/Collections
- Criminal Court Filings
- Criminal Orders/Minutes
- Disposing Criminal Cases
- Expungements
- Facsimile Filings
- Judicial Subpoena
- Judgment Orders
- Media Request
- Mental Health Reporting
- Commitments
- Restoration of Citizenship Rights
- Certificate of Employability
- Restoration of Voting rights
- Sealed by Court Order
- Transport Orders
- Violation of Probation
- Habeas Corpus
- Plea by Information
- Restoration of Voting Rights
- Restoration of Voting Citizenship Rights
- Sealed Orders
- Suspension of Driver's License for Failure to Pay Cost
- Criminal Court Fees
- Month End Reporting
- Felony Bill of Cost

CRIMINAL MANUAL

TCA codes are laws that all counties in the state of TN must abide by, however, procedures may vary. Always check your local rules or consult with your judges about procedures of your court. The information provided is for educational purposes only. It is ultimately up to the discretion of the Court how your county handles specific procedures. We have included the TCA codes that pertain specifically to the Clerks' as well as other statutes that Clerks should be familiar with.

ARRAIGNMENT

After the Grand Jury has met, an Arraignment Day is set for 1st appearance. This Arraignment Day is conducted by a Judge advising the Defendant of certain rights and determining the Defendants financial ability to hire an attorney. If the defendant cannot afford an attorney, a public defender or an appointed attorney may be provided upon successfully completion of an Affidavit of Indigency, finding of indigent and an Order of Appointment. From the arraignment, the clerk will need to make case management data entries including; the new attorney's name, Rule Docket Entry, set up the next hearing date, and add the indigent Administrative Fee if necessary. Give a copy of the appointment order to the appointed attorney/Public Defender.

See Supreme Court Rule 13 regarding Indigent appointment of counsel, qualification, and compensation. The Uniform Affidavit of Indigency form is also included.

See also T.C.A. 40-14-103 related to Administrative Fee Reporting.

See Tenn. Rules of Crim. Proc. 10 for more Arraignment Info.

ATTORNEY CLAIM FORMS – see Supreme Court Rule 13, Section 6

Attorney Claims must be submitted through the AOC using "ACAP". "ACAP" is the AOC's electronic filing system for Attorney and Judge's claim forms.

BAIL BONDS – T.C.A. 40-11-122

The roles of the Bail Bondsman and the Court Clerk have a unique relationship in the judicial system. In order for a Court Clerk to fully appreciate their obligation in the bonding process, they must be aware of the role of the bond and more particularly the bondsman.

Bail vs. Bond

The words "bail" and "bond" are often used almost interchangeably when discussing jail release, and while they are closely related to each other, they are not the same thing. Bail is the money a defendant must pay in order to get out of jail. A bond is posted on a defendant's behalf, usually by a bail bond company, to secure his or her release.

Methods for Making Bail

1. Cash TCA§ 40-11-118
2. Real Estate/Securities/Bondsman TCA §40-11-122
3. Signature/Summons or ROR TCA §40-11-115

NOTE: Real Estate/ Securities/ Bondsman pursuant to TCA §40-11-122 are the most prevalent form of bail bond.

Authority to Release Defendants

TCA §40-11-104

- a. Any magistrate may release the defendant on the defendant's own recognizance pursuant to § 40-11-115 or § 40-11-116 or admit the defendant to bail pursuant to § 40-11-117 or § 40-11-122 at any time prior to or at the time the defendant is bound over to the grand jury. The trial court may release the defendant on the defendant's own recognizance pursuant to § 40-11-115, admit the defendant to bail under § 40-11-116, § 40-11-117 or § 40-11-122, or alter bail or other conditions of release pursuant to § 40-11-144 at any time prior to conviction or thereafter, except where contrary to law.
- b. When a defendant has been released to appear as directed by the officer setting bail, and such defendant fails to appear as ordered, any new bail set shall be posted only pursuant to § 40-11-118 or § 40-11-122.

Right to Bail — Bail by Clerk — Maximum Amounts

TCA §40-11-105

- a.
 1. When the defendant has been arrested or held to answer for any bailable offense, the defendant is entitled to be admitted to bail by the committing magistrate, by any judge of the circuit or criminal court, or by the clerk of any circuit or criminal court; provided, that if admitted to bail by the clerk of any circuit or criminal court, the defendant has a right to petition the judge of the circuit or criminal court if the defendant feels that the bail set is excessive, and shall be given notice of this fact by the clerk.
 2. The clerk of any circuit or criminal court may only admit the defendant to bail when the judge is not present in the court and the clerk reasonably believes that the judge will not be present within three (3) hours after the defendant has been committed to the county or city jail, following arrest.
- b. Except as provided in subsection (c), in no event may a clerk set the amount of bail in excess of:
 1. One thousand dollars (\$1,000) if the defendant is charged with a misdemeanor;
 2. Ten thousand dollars (\$10,000) if the defendant is charged with a felony that does not involve a crime committed against a person;
 3. Fifty thousand dollars (\$50,000) if the defendant is charged with a felony that involves a crime committed against a person; or
 4. One hundred thousand dollars (\$100,000) if the defendant is charged with some form of homicide.
- c. A clerk may set the amount of bail in excess of the listed amounts in subsection (b) if the defendant is deemed a risk of flight pursuant to § 40-11-118.

Bail for Material Witness

TCA §40-11-110

- a. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that the witness has refused or will refuse to respond to process, the court may

- require the witness to give bail under § 40-11-117 or § 40-11-122 for appearance as a witness, in an amount fixed by the court.
- b. If the person fails to give bail, the court may commit the person to the custody of the sheriff, pending final disposition of the proceeding in which the testimony is needed, may order the person's release if the person has been detained for an unreasonable length of time, and may modify at any time the requirement as to bail.
 - c. If the person does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited as provided in § 40-11-120 or § 40-11-139.

Arrest Warrant Issued for Failure to Comply with Conditions

TCA § 40-11-112

Upon an increase in the amount of bail required or the defendant's failure to comply with any condition of a bail bond or recognizance release, the court having jurisdiction at the time of the increase or failure shall declare forfeiture and may issue a warrant for the arrest of the defendant.

Duties of the Clerk pertaining to this statute

Typically, in General Sessions Criminal Court, if a defendant fails to appear for court, a Failure to Appear warrant is issued. A conditional forfeiture, scire facias and capias are issued in addition to FTA pursuant to TCA §40-11-139 (**See EXAMPLE 2, 4 and 5**)

In Circuit Criminal a capias is typically issued, not a Failure to Appear warrant. Check your local rules for procedures of your Court.

Cash Bonds

Cash bonds can be posted in the jail or in some Clerk's offices - depending on your county. If it is posted at the jail, the Sheriff's Department will send the bond sheet and a check to the clerk's office.

- Add a new bond in the system for the defendant with the amount posted
- Put the date the bond was posted, not the date received in our office
- Select cash for the bond type
- Receipt the cash to whom the money is from. If the Sheriff Dept. sends a check, then list the sheriff dept on the receipt.

There are 2 ways to disburse the funds once the case is disposed:

1. If the defendant posted the bond - then apply the cash bond to outstanding court costs and fines on that case. Any balance will be refunded to the defendant.
2. If another person (friend or family) has posted the cash bond, if agreed upon by the person posting the bond, apply the cash bond to outstanding court costs and fines. Any remaining balance will be refunded to the person that posted the bond according to the bond sheet, if listed, or per a court order.

The money remains with the court until the case is disposed.

If a person requests in writing to be removed from the bond and their money returned to them, there will have to be a hearing set before the Judge to make that determination. Make sure there is an order/judgment before any money is released.

Duties of the clerk pertaining to this statute

Cash bonds may be posted in the jail and/or the clerk's office, depending on your county. If it is posted at the jail, the sheriff's department will send the bond sheet and a check to the clerk's office.

- Add a new bond in the system for the defendant with the amount posted
- Put the date the bond was posted, not the date received in clerk's office
- Select cash for the bond type
- Receipt the cash to whom the money is from. *For example:* If the sheriff's department sends the check, list the sheriff department on the receipt

Forfeiture of Defendant's Bail Deposit

TCA §40-11-120

If the defendant released upon recognizance under §40-11-115 or posting bail bond under §40-11-118 does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order or forfeiture shall be mailed forthwith by the clerk to the defendant at the defendant's last known address. If the defendant does not appear and surrender to the court having jurisdiction within thirty (30) days from the date of the forfeiture or, within that period, satisfy the court that appearance and surrender by the defendant are impossible and not the defendant's fault, the court shall enter judgment for the state against the defendant for the amount of the bail and costs of the court proceedings. The deposit made in accordance with §40-11-118 shall be applied to payment of the judgment and costs. Any balance of the judgment and costs may be enforced and collected in the same manner as a judgment entered in a civil action.

Judgment for Fine and Costs — Deposit Applied to Payment

TCA § 40-11-121

If a judgment for fine and court costs, or either, is entered in the prosecution of a cause in which a deposit had been made by the defendant, the deposit shall be applied to the payment of the judgment.

Bail Bond Secured by Real Estate

TCA§ 40-11-122

In lieu of the bail deposit provided for in §40-11-118, any defendant for whom bail has been set may execute a bail bond which may be secured as provided in this section. The bail bond may be secured by:

1. Real estate situated in this state with nonexempt unencumbered equity owned by the defendant or the defendant's surety worth one and one-half (1½) times the amount of bail set. If the bail bond is secured by real estate, the defendant or the defendant's surety shall execute a deed of trust conveying the real estate in trust to the clerk who shall immediately file the deed of trust in the office of the register of the county in which the real estate is situated. The costs of preparation of the deed of trust and recordation shall be paid by the defendant. The defendant must have a Title Opinion Letter showing no liens on the property, and the property must be located in Tennessee. The Title Opinion Letter must be issued by an attorney for proof that the property is unencumbered. It is good practice to require a copy of the most recent Tax Assessment from the Tax Assessor's office to base the value of the property. The Property Bond/Deed of Trust will remain on the property until the case is disposed. It is good practice to make sure the property owner aware that property bonds will affect them when trying to sell or refinance their property. After the case is disposed, the Clerk will need to sign a Release of Lien to be recorded at the Register of Deeds Office at their expense.

2. A written undertaking signed by the defendant and at least two (2) sufficient sureties, and approved by the magistrate or officer. Sureties under this section shall not be professional bondsmen or attorneys; or
3. A solvent corporate surety or sureties or a professional bail bondsman as approved, qualified or regulated by §40-11-101 — 40-11-144 and part 3 of this chapter. No bond shall be approved unless the surety on the bond appears to be qualified.

SEE FORMS

Approval of Bondsmen Withheld, Withdrawn or Suspended **§ 40-11-125**

1. In addition to the requirements of part 3 of this chapter regulating professional bondsmen, approval of a professional bondsman or other surety may be withheld, withdrawn or suspended by any court if, after investigation, it appears that a bondsman:
 - a. Has been guilty of violating any of the laws of this state relating to bail bonds;
 - b. Has a final judgment of forfeiture entered against the bondsman which remains unsatisfied;
 - c. Is guilty of professional misconduct as described in § 40-11-126; or
 - d. If applying for approval as a professional bondsman, has been convicted in any state of the United States of two (2) or more misdemeanors which are equivalent to Tennessee Class A or Class B misdemeanors; provided, however, that the misdemeanor convictions shall have occurred within five (5) years of the date the application for approval is filed.
2. Any court withholding, withdrawing or suspending a bondsman or other surety under this section shall notify the bondsman in writing of the action taken, accompanied by a copy of the charges resulting in the court's action. If, within twenty (20) days after notice, the bail bondsman or surety files a written answer denying the charges or setting forth extenuating circumstances, the court shall call a hearing within a reasonable time for the purpose of taking testimony and evidence on any issues of fact made by the charges and answer. The court shall give notice to the bail bondsman, or to the insurer represented by the bondsman, of the time and place of the hearing. The parties shall have the right to produce witnesses, and to appear personally with or without representation by counsel. If, upon a hearing, the court determines that the bail bondsman is guilty as alleged in the charges, the court shall thereupon withhold, withdraw or suspend the bondsman from the approved list, or suspend the bondsman for a definite period of time to be fixed in the order of suspension.
3. The clerk of the court and the sheriff of the county shall be notified of the action of the court and the offending bondsman stricken from the approved list.
4. Any applicant for approval whose application has been denied, withheld, suspended or revoked shall have the right of appeal to the next highest court having criminal jurisdiction, and the appeal shall be heard de novo.

Exoneration of Bail Bondsman or Surety by Surrender of Defendant **TCA § 40-11-132**

At any time, the bail bondsman or surety may surrender the defendant in their exoneration or the defendant may personally surrender to the officer. Surrender by a bail bondsman or surety shall be for good cause including, but not limited to, the following:

1. The defendant has violated the contractual provisions between the defendant and the bondsman;

2. The bondsman or surety has good cause to believe the defendant will not appear as ordered by the court having jurisdiction;
3. A forfeit, conditional or final, has been rendered against the defendant;
4. The defendant has failed to appear in court either as ordered by the court or as commanded by any legal process; or
5. The defendant has been arrested while on bond.

Arrest of Defendant by Bail Bondsman or Other Authorized Person

TCA § 40-11-133

1. For the purposes of § 40-11-132, 40-11-203, and 40-11-204, the bail bondsman or surety may arrest the defendant on a certified copy of the undertaking, at any place either in or out of the state, or may, by written authority endorsed on the certified copy, authorize another person to make the arrest. In the event that circumstances prevent the obtaining of a certified copy of the undertaking or capias from the clerk's office at the time of the arrest or surrender, a duplicate copy of the same shall suffice until such time that a certified copy can be obtained from the clerk's office.
2. After the payment of the forfeiture, the bail bondsman or surety may arrest the defendant on a certified copy of the capias, or may, by a written authority endorsed on the certified copy, authorize another person to make the arrest.
3. Any capias issued pursuant to a forfeit, whether the forfeit is conditional or final, shall remain in full force and effect until the defendant is apprehended and returned to the criminal justice system, and a disposition is entered in the defendant's case.
4. Any approved bail bondsman in good standing is authorized to return the defendant to the jurisdiction for which the bail bond is obligated for the defendant's appearance; provided, the bail bondsman is liable for the expenses of returning the defendant *and the defendant is located within this state*.

Duties of the Clerk Pertaining to This Statute

If a defendant has failed to appear, the bondsman will need certified copies of Scire Facias and/or Appearance Bond to detain defendant. It is our duty to provide these documents to the bondsman if requested. The certified copies can be charged to the defendant.

Sheriff Assisting Bail Bondsman or Surety in Arrest

TCA § 40-11-134

The bail bondsman or surety is also entitled to the aid of the sheriff of any county in this state in making the arrest, within the bounds of the sheriff's county, by producing a certified copy of the bail bond, and, in person or by agent, accompanying the officer to receive the person arrested.

Surrender to Sheriff

TCA § 40-11-136

The surrender shall be made to the sheriff of the county in which the defendant is bound to answer for the offense, whether by change of venue or otherwise, and the sheriff is not bound to accept the surrender unless made at the place of holding the court in that county, or at the county jail.

Duty of Bail Bondsman or Surety upon Surrendering Defendant — Hearing

TCA § 40-11-137

- a. Upon surrendering the defendant, the bail bondsman or surety shall, as soon as is reasonably practicable, go before any court having jurisdiction authorized to admit to bail, and notify the officer of the surrender.

- b.
 - 1. Any court having jurisdiction so notified shall have the defendant brought before it as soon as practicable, and within seventy-two (72) hours, and determine whether or not the surrender was for good cause.
 - 2.
 - A. If the court having jurisdiction finds that the surrender was arbitrary or not for good cause, it may order the defendant rereleased upon the same undertaking or impose other conditions as provided by law.
 - B. If the surrender is found to be for good cause, the court having jurisdiction shall approve the surrender by endorsement upon the bail bond or by other writing, and it shall be the duty of the surrendering bail bondsman to deliver the written approval or copy of the approval to the sheriff.
 - 3. This subsection (b) shall not apply where a surrender is based on a conditional or final judgment of forfeiture issued by the court having jurisdiction over the defendant.
- c. The court shall fix the amount of premium to be refunded, if any.

Release of Bail Bondsman or Sureties from Obligations **TCA § 40-11-138**

- a. If the conditions of the bail bond have been performed and the defendant has been discharged from the defendant's obligations in the cause, the clerk of the court shall return to the bondsman the deposit of any cash. If the bail has been secured by real estate, the clerk of the court shall immediately prepare and forward to the register a written release of the deed of trust on the real estate. The costs of the release shall be paid by the defendant.
- b.
 - 1. A bail bondsman or surety shall be released from an obligation under a bail bond if the charge against the surety's principal is disposed of by acquittal, agreement with the state, whether diversion or otherwise, or retirement.
 - 2.
 - A. If the charge is disposed of by conviction or a plea of guilty, the bond shall remain in effect until the court renders the defendant's sentence.
 - B. After conviction or a plea of guilty, and before the court renders the defendant's sentence, the bond shall not be forfeited against a surety, shall not be included in the calculation of a professional bondsman's capacity or solvency, or otherwise negatively impact the surety.
- c. If after the bond has been active and in effect for three (3) years and the state has failed to seek an original indictment before a grand jury against the defendant covered by the bond, the bond shall not be forfeited against the surety and shall not be included in the calculation of a professional bondsman's capacity, solvency, or otherwise negatively impact the surety involved.

Forfeitures - Surety Bond

When a Defendant fails to appear for a court hearing, has a surety bond in place, and the Judge orders a Capias to be issued, conditional forfeiture of the surety bond may begin. There are 2 (two) stages/steps to a surety bond forfeiture.

Conditional Forfeiture

Some find that waiting a period of time before beginning the forfeiture process, saves time and money as a lot of times, the Defendant will be arrested on the capias before the forfeiture process is complete.

Begin the Conditional Forfeiture Process according to T.C.A. 40-11-139. Prepare a Conditional

Forfeiture Order and Scire Facias including a court date that is beyond 180 days from the estimated service of the order and Scire Facias.

Make the appropriate rule entries. Notice of the order of forfeiture shall be immediately sent by regular mail by the clerk of the court to the defendant at the defendant's last known address. Add \$40 clerk fee to Defendant's cost bill for Scire Facias. (T.C.A. 8-21-401(g)(4). Add the appropriate hearing to the computer and file for hearing. If the bonding company files any motions the filing fee for the motion is \$75. (T.C.A. 8-21-401(g)(4)

Final Forfeiture

When Final Forfeiture is granted at the hearing, prepare a Final Forfeiture Order and collect from the bonding company the bond amount. If the case is a felony, disburse the bond to the Dept. of revenue. (T.C.A. 40-24-106) If the case is a misdemeanor, disburse the bond to the County Trustee (T.C.A. 40-24-106) If the case is a drug charge, disburse the bond to the arresting agency. (T.C.A. 39-17-420) If the case is a DUI charge, disburse the bond to arresting agency (T.C.A. 55-10-303) If the case is a violation of any 55-8- (Operation of Vehicles) or any violation of 55-9- (Equipment), disburse bond to the commissioner of Safety. (T.C.A. 55-10-303)

Related T.C.A.

40-11-201 thru 40-11-215; 40-11-120, 40-11-139, 40-11-140; 40-4-117; 8-21-401(g)(3), 8-21-401(g)(4); 40-24-106; 39-17-420; 55-10-303.

Duties of the Clerk pertaining to this statute

Note: This statute pertains to a defendant, who is out on bond, fails to appear for court

- Order of Forfeiture mailed (by regular US Postal Mail) to the defendant's last known address (*See Example 2*)
- Scire Facias issued and sent to Sheriff's Dept. for service upon bondsman (*See Example 4*)

After the passage of 180 days of the scire facias being served to bondsman, an order of final forfeiture (***see example 3***) is issued, which gives the bondsman 30 additional days to bring in the defendant or pay the bond. this is also mailed to the defendant's last known address.

- Capias issued and sent to Sheriff's Dept for service upon the defendant. (See ***EXAMPLE 5***)

Important: once the capias has been served on the defendant and the defendant has been arrested, the bondsman is relieved of their obligations on that specific bond

****EXAMPLES OF ALL FORMS REFERENCED ARE ATTACHED****

COURT ACTION REPORT

Clerks are required to submit all traffic convictions, relating to CDLs, to the TDOS within 5 calendar days of conviction. TCA 55-50-409

CRIMINAL CAPIAS – see Rules of Criminal Procedure – Rule 9

Issue a capias for Sealed (Presentment) Grand Jury Indictments with the Judge setting the amount of the bond. These remain sealed until served on the defendant.

A judge may also request a capias to be issued when a defendant fails to appear for a scheduled court hearing.

- Costs are taxed to the defendant if guilty
- Be sure to list the identifying information of the defendant on the capias to avoid wrong arrests (DOB, Gender, Race, DL, SSN, address, etc.)
- Sign and date of issuance and describe the offense charged
- Keep a file copy until served
- Forward to sheriff for service

When the capias is returned by the sheriff:

- Make a Rule Docket Entry listing the officer that served it and the date of service. Scan and file. Pull the copy out of the file and destroy
- Go into the charges and add the arresting information and the state control number
- Add the bond if one has been posted
- Unmark the confidential section/box in your system if this capias was for a sealed indictment

See Rule 9 of Rules of Criminal Procedure and T.C.A. 40-13-301 thru 304.

CRIMINAL COST BILLS/COLLECTIONS

After the judgment order/VOP disposition order is filed, a cost bill should be mailed to the defendant at the last known address. You may want to set up reminders each month to keep track of cost collections, set up payment agreement plans right after the defendant's court hearing, issue garnishments/executions, etc.

Every clerk has different cost collection ideas and policies including in-house collections, payment plans, collection agencies, and other ideas. This topic is a continuous debate of finding the best way to collect extraordinarily expensive criminal costs from many indigent defendants. Effective cost collections often require the support of your Judge, DA, Public Defender, Probation and County Commissioner. Please check with fellow clerks for their best ideas on effective cost collection procedures. See T.C.A. 40-24-105

CRIMINAL COURT FILINGS

The Clerk is required to stamp "Filed" each pleading/document with the date actually received and make a Rule Docket Entry. You may scan the document before placing in the file. Look for any hearing dates on Motions, etc. and add accordingly.

CRIMINAL ORDERS / MINUTES

Be sure to read each order and process accordingly. All court orders must either be scanned electronically into your system or copied on minute paper, numbered, and indexed in the Minute Book.

DISPOSING CRIMINAL CASES

When disposing criminal cases - if the charge was reduced or amended, be sure that you select the correct conviction. Add the fine and costs if convicted, but no costs are added when dismissed, found not guilty, or no true bill. Be sure all charges/counts have a disposition.

EXPUNGEMENTS – T.C.A. 40-32-101

A defendant can have their criminal case expunged if:

- You had charges against you dismissed
- A “no true bill” was returned by a grand jury
- You were arrested and released without being charged
- You went to trial, which resulted in a not guilty verdict
- The case resulted in a nolle prosequi (prosecution will not be pursued)
- An order of protections was successfully defended and denied by a court following a hearing
- Successful completion of judicial diversion/pretrial

Tennessee law also provides a process to remove some misdemeanor and low-level felonies from your criminal record. See TCA 40-32-101 for misdemeanor exclusion and felony inclusion list.

- Other requirements to consider for eligibility:
- Defendant must have no more than two convictions on their record, provided each of the offenses are eligible for expunction under TCA 40-32-101 (g) and are either two (2) misdemeanors or one (1) felony and one (1) misdemeanor.
- Five (5) years must have elapsed since the completion of the sentence imposed for the most recent offense, if the offense was both misdemeanors of a class E felony. Ten (10) years must have elapsed since the completion of the sentence imposed for the most recent offense, if one of the offenses was a class C or D felony.
- Complete all terms of imprisonment, probation or parole.
- Paid all fines, restitution, court cost and other conditions required.
- Pay the judicial and pre-trial expunction fee (\$100.00). Court clerks now have the discretion to waive the expunction fee.

You may process all expungements through TN FlexCheck. Contact the Tennessee Bureau of Investigation for authorization:

Expungements and Dispositions

Phone: 615-744-4617

FAX: 615-744-4672

Email: TBI.Expungement@tn.gov TBI.Dispos@tn.gov TBI.Diversions@tn.gov

Mailing Address:

901 R.S. Gass Boulevard

Nashville, TN 37216

FACSIMILE FILINGS – Rules of Criminal Procedure – Rule 49.1

The clerk shall maintain a dedicated telephone line for the fax machine and the pleadings filed by fax must meet the following criteria:

- Be accompanied by the uniform cover sheet
- Not exceed fifty (50) pages, unless authorized by Court
- Pleadings may not be split into multiple facsimile transmissions to avoid this page limitation

Documents that shall NOT be fax filed are:

- An appeal from lower court to a circuit/criminal court
- Notice of Appeal to an appellate court
- The affidavit of complaint for an arrest warrant or summons
- Search warrants, affidavits, returns, and inventories

- Confidential documents that court previously has ordered to be filed under seal
- Indictments, presentments, and information's

Filing faxed pleadings received by the Clerk:

- Pleadings faxed and received from 4:30 p.m. – 11:59 p.m., clerk's local time, on a day when the clerk's office is open shall be deemed filed as of that business day.
- Pleadings received after 12:00 a.m. (midnight) – 7:59 a.m. on days the clerk's office is open are deemed filed the preceding business day
- Pleadings received on a Saturday, Sunday, legal Holiday or a day in which the clerk's office is closed are deemed to be filed the preceding business day

Risk of conveying documents by fax:

- The sender bears the risk of conveying the document. Provisions are in the rule to remedy the filing date of unsuccessful transmissions (See TRCrP 49.1(3))

Service charge for fax filing:

- The cost for fax filing, in addition to the normal filing fee, is \$5 for each fax filing PLUS \$1 per page (including cover sheet). (Ex. a 7-page document plus cover sheet is \$5 + \$8 = \$13 service charge)
- The sender must pay the fee for fax filing within 10 calendar days unless a pauper
- It may not be taxed as court costs unless the sender has already been allowed to proceed on a pauper's oath or an attorney for such a party, then the charge shall be taxed as court costs.

JUDICIAL SUBPOENA – See T.C.A. 40-17-123

A Judicial Subpoena is a CONFIDENTIAL subpoena requested by law enforcement to obtain certain types of documents or information for investigation purposes. The law enforcement officer shall submit an affidavit along with the Judicial Subpoena to a Judge of a court of record or a General Sessions Judge who serves the officer's county of jurisdiction. The officer will then serve the Judicial Subpoena and return it to the Judge. The affidavit/subpoena shall be kept under seal by the Judge until a copy is requested by the DA, criminal charges are filed in the case, or the affidavit is ordered released by a court of record.

JUDGMENT ORDERS

The District Attorney creates uniform judgment orders for disposing all criminal cases. All attorneys and judge must approve and sign. The clerk stamps "Filed" with date and processes accordingly. See TCA 39-17-436 for distributions by the clerk.

MEDIA REQUESTS

There are several different types of media requests (i.e. court documents; in-person interviews; etc.) and each request should be handled promptly and professionally. Refer to the Tennessee Public Records TCA 10-7-503, your county public records policy when documents are requested, and Supreme Court Rule 30.

The clerk should directly work with the media if available or assign a trusted and professional employee/spokesperson to handle media requests. It is not recommended that every employee have the authority to handle media requests. The clerk should develop a policy on whom/how to address media requests. The clerk/spokesperson should choose words/opinions wisely as it may be printed on

the first page of your local newspaper.

Documents Requests

the most common media requests are copies of criminal warrants, indictments, and judgments. Redact rape/juvenile victims' names; SSN; Driver's License before giving copies of the document to the media. You may ask the reporter to email or fax their requests to you, so that you will have written documentation on the type of information you provide them. Get the reporter's name, media outlet, phone/email address, and deadline for the requested information. Promptly complying with media requests will enhance your working relationship with the media.

In-person/On-camera Interviews

You may ask the reporter to put their request in writing so that you will know what information they will be asking you. This will give you time to think about your response, write it down and get it right. Remember anything you say will be "on the record," so be confident, accurate, polite, and concerned about the situation/subject. Do not speak for someone else. Keep it short and simple. Look the interviewer in the eye, not at the camera. As stated above, get the reporter's name, media outlet, phone/email address, and deadline for the interview.

Camera in the Courtroom requests

This is specifically addressed in Supreme Court Rule 30. Requests for media coverage must be in writing to the presiding judge not less than two (2) business days before the proceeding is scheduled to begin. The Judge may waive the two-day requirement at his discretion. Notification that the media has requested such coverage shall be provided by the Clerk of the particular court to the attorneys of record in the case. Such notification may be waived by the Judge at the clerk's request if the request is made for media coverage of all or part of a docket. If the Judge waives notification, the clerk shall post a notice with the docket in a conspicuous place outside the courtroom. The notice must state that the proceedings will be covered by the media, and that any person may request a continuance when the docket is called.

See Rule 30 of Tennessee Rules of Criminal Procedure

MENTAL HEALTH REPORTING - When defendant is believed to be incompetent to stand trial

When Mental Health pleadings (including Forensic Evaluation by Mental Health Center/Judicial Hospitalization under TCA 33-7-301) are filed in Criminal Court, copies should be mailed to the mental health facility as directed in the Order and to the Sheriff if the defendant is housed in jail. The Sheriff will transport the defendant to the mental health facility as indicated in the order.

The Clerk needs to review the case to determine if the defendant is charged with a Misdemeanor or Felony charges. If Misdemeanor – your County will be responsible for payment of any treatment. You may want to notify your County Mayor and/or County Attorney to be prepared to possibly pay expensive costs for treatment/hospitalization. You need to keep track of the case(s) so that the Judge/District Attorney can follow up with a review.

If the defendant is charged with a Felony, then the state of TN will be responsible for the cost of testing, treatment, and hospitalization.

COMMITMENTS

All commitments must be reported within 3 business days of filing the Order of Commitment. The individuals that need to be reported are those that have been adjudicated as having a "mental defective" and ordered committed to a mental facility after the evaluation. This must be reported to 2 agencies: 1) Department of Safety – Handgun Carry Permit Unit by mail a copy of the Order or any other method

providing the full name; docket number; date of commitment or adjudication as mental defective; name of mental facility/hospital; DOB; Sex and (2) AOC (email Amanda Hughes) to forward electronically to the FBI NICS Index CJIS Division The Clerk may want to keep a current list of any pending cases waiting to see if the defendant is found competent or incompetent after the mental evaluation(s). It is extremely important and time sensitive (3 days) to notify the FBI and TN Dept of Safety to revoke any handgun permit and to keep the defendant from purchasing a new handgun. It is also a good practice to keep documentation that you reported a commitment to the 2 agencies listed above.

See mental health reporting statutes: TCA 16-1-117(a) (6)(D); TCA 16-10-213; TCA 16-11-206; TCA 16-15-303; TCA 16-16-120.

RESTORATION OF CITIZENSHIP RIGHTS - See TCA 40-29-101 through 106

The person must file a petition in Circuit Court where the petitioner resides or where the conviction occurred; properly notify the District Attorney General where petitioner resides and where convicted; and petitioner pays civil costs for filing the petition.

CERTIFICATE OF EMPLOYABILITY - See TCA 40-29-107

A person may file a petition in Circuit Court for a certificate of employability either in conjunction with or independently of petitioning the court for restoration of citizenship rights; filed where petitioner resides or conviction occurred; and petitioner pays civil costs for filing the application. The application form was created by the AOC and can be found on their website.

RESTORATION OF VOTING RIGHTS - See TCA 40-20-201 through 205

A convicted felon may restore a lost voting right depending upon the crime committed and the year of the conviction. See the Tennessee Secretary of State's information and forms at: www.sos.tn.gov/products/elections/restoration-voting-rights.

Felony convictions after May 18, 1981 –

Conditions under which a person may be eligible for restoration of voting rights:

- Receipt of a pardon;
- Expiration of the maximum sentence imposed for the crime; or
- Granted final release from incarceration or supervision by the board of paroles, TDOC, or county correction authority; and
- Any court ordered restitution paid; and/or
- Current in the payment of any child support obligations; and/or
- Any court ordered court costs paid

Procedures for restoring voting rights:

1. Court order; and given to the county election office where the person resides.

OR

2. Certificate of Restoration; and given to the county election office where the person resides.

- The defendant may print the Certificate of Voting Rights form from the website listed above or obtain from the county election office
- Certificate of Voting Rights must be completed by:
 - The pardoning authority; or

- An agent or officer of the supervising or incarcerating authority (the probation office completes/signs parts 1 and 2 on the form); and/or
- The Circuit /Criminal Court Clerk (completes/signs parts 3 and 4 - verify all information is correct and restitution and costs are all paid)

Exceptions – Persons convicted of any of the following, cannot have their voting rights restored:

- Between July 1, 1986 and June 30, 1996 – 1st deg. Murder, aggravated rape, treason, or voter fraud
- Between July 1, 1996 and June 30, 2006 – murder, rape, treason or voter fraud
- On or after July 1, 2006 – any of the above, or any degree if murder or rape or any offense under TCA 39-16-1,4, or 5 designated as a felony or any violation containing the same elements and designated as a felony in any other state or federal court; or any sexual offense under TCA 40-39-202 designated as a felony or any violation containing the same elements and designated as a felony in any other state or federal court and where the victim of such offense was a minor.

Felony convictions between January 15, 1973 and May 17, 1981 -

Because a person convicted of an infamous crime during this time period may register to vote, regardless of the nature of the conviction, there are no conditions or procedures that apply.

Felony convictions prior to January 15, 1973 –

Types of crimes that forfeits right to vote: Abusing a female child; arson and felonious burning; bigamy; bribery; burglary; larceny; horse stealing; robbery; receiving stolen property; stealing bills of exchange or other valuable papers, counterfeiting, forgery; destroying a will; incest; rape; sodomy; perjury; subornation of perjury.

Conditions under which a person may be eligible for restoration of voting rights:

- Proving that, at the time of conviction, the Judge did not render person infamous;
- Conviction reversed on appeal;
- Receipt of full pardon; or
- Circuit Court order of Restoration of Full Rights of Citizenship

Procedure for restoring voting rights for these convictions:

The person presents proof of one of the above conditions to the election commission. The clerk does not approve nor sign any form for convictions prior to January 15, 1973.

SEALED BY COURT ORDER

Upon the Judge ordering a document sealed, the clerk must maintain the document as to not allow any opportunity of viewing. In most instances, the sealed document is placed in a manila envelope, with the notation “SEALED BY THE COURT”, and also includes the style of the case, case number, and date filed. The envelope should be sufficiently secured with tape or other measures to ensure that the document is not accessible. A rule entry is made that a document has been placed in the file under seal. Any request to view sealed documents must be presented to the presiding Judge. No sealed document shall be reviewed without a court order.

TRANSPORT ORDERS

These type orders are prepared by the District Attorney or Attorney and signed by the Judge directing a penal facility to transport a prisoner from their facility to the court. It can also direct your local law enforcement to retrieve a prisoner from another County Jail and bring him to Court.

VIOLATION OF PROBATION

Violations of probation occur when an individual has committed an infraction against the agreed upon terms of his/her probation. The supervising Probation Officer will issue a warrant outlining all the ways the defendant violated his/her probation. The warrant is sworn to before the adjudicating Judge at which time it is assigned a bond amount and brought to the Clerk to issue and forward to the Sheriff's department for service. Some judicial districts recognize differences between the types of VOP issued. The general process remains the VOP must be issued by the clerk, served by a sheriff, and set for a VOP hearing. After service of this warrant an attorney is appointed and the case is set for court. Reopen the case and add the violation of probation charge

HABEAS CORPUS - TCA 29-21-101 through 29-21-130

29-21-101. Grounds for writ.

(a) Any person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in subsection (b) and in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.

See below from www.tn.gov- Attorney General and Reporter

Petition for Writ of Habeas Corpus

Upon completion of all available state appeals, a defendant may file a petition for writ of habeas corpus in the federal district court. The primary function of the writ of habeas corpus is to petition for release from unlawful imprisonment. A defendant is entitled to federal habeas corpus relief only by showing a violation of a federal constitutional right.

If federal habeas corpus relief is denied in the district court, a defendant may ask the United States Court of Appeals for the Sixth Circuit to grant an appeal. If the district court decision is affirmed in the Court of Appeals, the defendant may petition the United States Supreme Court to review the case. However, review by the United State Supreme Court is rarely granted. In capital cases, once the habeas action is closed, the Attorney General's Office file a motion asking the Tennessee Supreme Court to set an execution date.

PLEA BY INFORMATION

RULE 7: INDICTMENTS, PRESENTMENTS AND INFORMATION.

(a) General Provision. The definition, form, use, return, endorsements, content, and procedure relating to indictments, presentments, and criminal information are as provided by law.

(b) Amending Indictments, Presentments and Information's.

(1) With Defendant's Consent. With the defendant's consent, the court may amend an indictment, presentment, or information.

(2) Without Defendant's Consent. Without the defendant's consent and before jeopardy attaches, the court may permit such an amendment if no additional or different offense is charged and no substantial right of the defendant is prejudiced.

(c) Bill of Particulars. On defendant's motion, the court may direct the district attorney general to file a bill of particulars so as to adequately identify the offense charged.

Plea by Criminal Information – T.C.A. 40-3-103

All violations of the criminal laws may, with consent of the accused and the accused's attorney and of the Court, be prosecuted upon the filing of an information.

"Information" means a written statement by a district attorney general charging a person with the commission of a criminal offense.

The Court must, before consenting to a prosecution by information, advise the accused in the presence of the accused's attorney of the accused's constitutional right to be tried only upon presentment or indictment of the grand jury of the accused's peers.

Upon the accused's agreeing in writing in the presence of the accused's attorney to waive such right, the Court may proceed in all respects as in cases prosecuted by indictment

RESTORATION OF VOTING RIGHTS TCA 40-29-201 through 205

A convicted felon may restore a lost voting right depending upon the crime committed and the year of the conviction.

See the Tennessee Secretary of State's information and forms at:

www.sos.tn.gov/products/elections/restoration-voting-rights

Felony convictions after May 18, 1981-

Condition under which a person may be eligible for restoration of voting rights:

- Receipt of a pardon;
- Expiration of the maximum sentence imposed for the crime; or
- Granted final release from incarceration or supervision by the board of paroles, TDOC, or county correction authority; and
- Any court ordered restitution paid; and/or
- Current in the payment of any child support obligation; and/or
- Any court ordered court costs paid

Procedures for restoring voting rights:

1. Court order; and given to the county election office where the person resides.

OR

2. Certificate of Restoration; and given to the county election office where the person resides.
3. Certificate of Voting Rights must be completed by:
 - a. the pardoning authority; or
 - b. An agent or officer of the supervising or incarcerating authority (probation office completes/signs parts 1 and 2 on the form); and
 - c. The Circuit/Criminal Court Clerk (completes/signs parts 3 and 4- verify all information is correct and restitution and costs are all paid)

PERSONS CONVICTED OF ANY OF THE FOLLOWING, CANNOT HAVE THEIR VOTING RIGHTS RESTORED:

- Between July 1, 1986 and June 30, 1996- 1st degree murder, aggravated rape, treason, or voter fraud

- Between July 1, 1996 and June 30, 2006 -murder, rape, treason, or voter fraud
- On or after July 1, 2006- any of the above, or any degree of murder or rape or any offense under TCA Title 39, Chapter 16, parts 1, 4, or 5; or any sexual offense under TCA 40-39-202 (20) or any violent sexual offense under TCA 40-39-202(30) designated as a felony and where the victim of such offense was a minor

Felony convictions between January 15, 1973 and May 17, 1981-

Because a person convicted of an infamous crime during this time period may register to vote, regardless of the nature of the conviction, there are no conditions or procedures that apply.

Convictions prior to January 15, 1973-

If you were convicted of a crime listed below, you still have the right to vote if you can show that at the time of your conviction the Judge did not render you "infamous", if your conviction was reversed on appeal or expunged, if you receive a full pardon, or if you have your voting rights restored. Abusing a female child:

- Arson and felonious burning
- Bigamy
- Burglary
- Felonious breaking into a business house, outhouse other than a dwelling house
- felonious breaking and entering a dwelling house
- Larceny
- Horse stealing
- Robbery
- Stealing bills of exchange or other valuable papers
- Receiving stolen property
- Counterfeiting
- Forgery
- Destroying a will
- Incest
- Rape
- Sodomy
- Buggery
- Perjury
- Subornation of perjury

RESTORATION OF CITIZENSHIP RIGHTS TCA 40-29-105

An individual's citizenship rights must be restored through a court order.

(1) Except as provided in subdivision (c)(2)(B), a person rendered infamous or whose rights of citizenship have been deprived by the judgment of a state or federal court may seek restoration of full rights of citizenship by petitioning the circuit court of the county where the petitioner resides or where the conviction for the infamous crime occurred;

Order for Restricted Driver's License

If you get a DUI conviction in Tennessee, it is possible to apply for a restricted license that allows you to drive under certain circumstances. The application process includes the following:

An Order for Restricted Driver License completed by the court of

Obtaining the proper liability insurance form

Paying license and application fees

Complying with any applicable ignition interlock requirements

The following offenses prevent you from applying for a restricted license: conviction or prior conviction for vehicular homicide, aggravated vehicular homicide or vehicular assault.

Restricted license information and providers can be found on the Tennessee Department of Safety and Homeland Security website.

See also Tenn. Code Ann. §55-10-409

Attached: Order for Restricted Driver License

Attached: Affidavit of Indigency

SEE FORMS

SEALED ORDERS

All sealed records are non-public records and should not be opened without approval by the court.

SUSPENSION OF DRIVER'S LICENSE FOR FAILURE TO PAY COST

See attached Public Chapter 438 and chart.

CRIMINAL COURT FEES

Priority (Restitution, Lit Taxes, Clerk Fee, Sheriff Fees) Effective January 2022, restitution is paid first when applying cost

.

MONTH END REPORTING

Every county is responsible for distributing month end reports by the 15th of each month.

FELONY BILL OF COST

The clerk is responsible for sending certified judgments along with the state cost bill report to the 320 6th Avenue North, 3rd Floor, Rachael Jackson Building, Nashville TN 37243-0465 for reimbursement. See instruction sheet.

Delinquent Taxes

- Real Property
- Personal Property
- Public Utilities
- Delinquent Tax Time Chart
- Delinquent Personal Property Tax Time Chart
- Report on Reference
- Tax Sale of Real Estate
- Purchaser's Information Form
- Clerk's Report of Sale
- Notice of Sale Excess Funds
- Motion to Redeem Property
- Certificate of Service
- Order Allowing Redemption
- Order Denying Motion to Redeem
- Motion to Claim Excess Funds
- Order Granting Motion for Excess Fund
- Order Denying Application for Excess Funds

TABLE OF CONTENTS FOR DELINQUENT TAX GUIDE

INTRODUCTION-----	02
A. Real Property	
12. Filing of Lawsuit	03
13. Service	03
14. Record Search	04
15. Adding Parties	04
16. Notice to Lien holders	04
17. Constructive Service	05
18. Report on Reference	05
19. Default Judgment	05
20. Order to Sale	05
21. Dismissal of Taxes Paid, etc.	06
22. County Legislative Body to Act Prior to the Sale	06
23. Sale	06
24. Confirmation of Sale and Report to the Court	07
25. Notice of Excess Funds	07
26. Void of a Forced Bid on Behalf of the County	07
27. Redemption	07
28. Excess Sale Proceeds	08
B. Personal Property	
1. Filing of Lawsuit (if applicable)	09
2. Service.....	09
3. Dismissal of Parties without service.....	10
4. Default Judgment.....	10
5. Judgment Collection	10
C. Public Utilities	
1. Filing of Lawsuit	11
2. Service.....	11
3. Dismissal of Parties without service.....	12
4. Default Judgment.....	12
5. Judgment Collection.....	12
USEFUL TAX STATUTES-----	13
USEFUL FORMS -----	14-35

DELINQUENT TAXES

The purpose of the Delinquent Tax guide is to provide an overview of the collection process in the court system for both real and personal property taxes and to provide basic assistance and references. It is merely a guide and because our state is so dynamically different in collection procedures because of location, history and sometimes preference, it should only be used as a guide. The world of delinquent tax collection is ever changing for assessors, trustees, delinquent tax attorneys, court clerks and county mayors across the state of Tennessee. Every year, legislation is introduced, and often times passed, that affects one or more areas of delinquent tax collection and legislation doesn't always originate within one or more clerks, or the clerk's conference, therefore, the procedure by which we collect delinquent property taxes can become complex. This guide makes references to the Tennessee Code Annotated which should always be consulted and reviewed for periodic updates as well as consultation with the delinquent tax attorney contracted by your respective counties.

REAL PROPERTY

1. FILING OF LAWSUIT

Delinquent Property Tax suits for ad valorem taxes shall be filed after February 1st and no later than April 1st of each year by the County and Municipalities after they have been delinquent for one year in the office of the tax collector (TCA 67-5-2405). There is no litigation tax in delinquent tax suits and the clerk's fees are set out in T.C.A. 8-21-401.

As soon as possible the information needs to be loaded onto your system. This can be done manually or by sharing the information between the vendor used by the court and the vendor from the entity. You could possibly have people wanting to pay on or before the lawsuit is filed. No taxes should be collected by the court until the lawsuit is filed, so it is imperative to get the taxes onto your case management system as soon as possible. Partial payments are not allowed except in bankruptcy cases wherein the payments would come from the bankruptcy court.

Some clerks opt to have the suits consolidated prior to issuing process so that there is no duplication on those defendants named in multiple civil actions. This is just like any other law suit. Pursuant to TCA 67-5-2410(e) clerks shall not be required to prepare summons or notices, etc. (however, in some counties an agreement can be reached, especially if you have a vendor that can help prepare these documents in less time and the government entities agree to pay the costs).

2. SERVICE

Defendants are required to be served by notice according to the Tennessee Rules of Civil Procedure pursuant to TCA 67-5-2415(a). Service can be perfected either by certified mail, personal service by the Sheriff, posting on the property or constructive service (publication). The constitution requires that the defendants be given the **best** notice possible, which has been defined as that "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

It can be helpful to keep an updated record of the service for each defendant. This will be useful at a later date when checking to see who will need to be served by publication and also who was properly served prior to a potential motion for default if the taxes are not paid. Often, after service, defendants will contact the office concerning problems with assessment or a new owner, if a tax was turned over in error or if an error occurred with the assessment. You should notify your delinquent tax attorney immediately so that they can decide how they want to proceed either by adding additional parties or dismissing the tax if it was filed in error. Both actions should require a court order and sometimes a preliminary motion. When monitoring service, it may be necessary to issue alias process in order to perfect service on the original defendants as well as any other parties that have been added.

It is not necessary for unborn, unfound or unknown owners to have a guardian ad litem, attorney ad litem, or other representative, appointed to represent their interests in the proceedings except in cases where the plaintiff has reasonable cause to believe that an interested person owning an interest in a parcel is a minor or a person who is incompetent and that person has no suitable

representative to act on their behalf, the plaintiff shall make that fact known to court and the court will determine if the court needs to appoint a someone to represent that person's interest. If so, a guardian ad litem should be appointed early in the lawsuit and be done by motion and order.

3. RECORD SEARCH

Record searches in delinquent tax suits are done at different times all across the state. Some attorneys do the record search early to make sure they have all the defendants before the court and others prefer to do the record search later on in the lawsuit so that it is not as time consuming. Record searches will help determine if new owners exist, if a property owner has died, or who the lien holder's are for that particular parcel. There is no preference stated in the law, but whenever a record search is desired, the fee for such should be requested by the delinquent tax attorney in a motion and then allowed by the court in an order. Record searches often reveal that a defendant has a federal tax lien recorded against them. If so, the delinquent tax attorney will need to proceed differently by specific notification of the lawsuit as well as the pending sale date to the United States Government.

If requested by the county trustee, from June 1 to July 1 the clerk is required to send, annually, a complete list of unpaid taxes pending in the court as of June 1st of the current calendar year, with identification of the property involved in such suits, and the years for which taxes are delinquent to the trustee (TCA 67-5-2403).

4. ADDING PARTIES

When new parties are added, if necessary, service will need to be attempted in the same manner as the original defendants. This is usually accomplished by the delinquent tax attorney filing a motion to add the additional parties found either by the record search or some other form of information. Once the order allowing the parties has been signed by the Judge, service of process should issue and be attempted.

5. NOTICE TO LIEN HOLDER

The tax attorney is required to notify every lien holder, of each parcel of real estate of the pending lawsuit and the potential sale and also of the sale date when it is set. They should bring the clerk a copy of these notifications for the file or an affidavit stating such. TennCare should also be notified as an interested party for those owners who are deceased by the delinquent tax attorney pursuant to T.C.A. 67-5-2502 (c)(1)(B).

6. CONSTRUCTIVE SERVICE (IF NEEDED)

If service is needed by publication, a motion should be filed and an order signed directing such as in any other lawsuit. This publication will need to be published for 4 consecutive weeks, like any other non-resident notice.

Some clerks find it helpful to publish an article about several months into the lawsuit that is not a legal notice but is a general article about the delinquent tax suit. This is not a statutory requirement but does give the public some information about the procedure as well as prompting some taxpayers to come on and pay their taxes. This usually does not cost anything to publish and is considered a public service announcement.

7. REPORT ON REFERENCE

A report on reference is done by the clerk either before the sale or after the confirmation but must be done prior to distribution of the sale proceeds, but it might be a helpful practice to make the report prior to the sale to correctly ascertain all amounts due on the property at the time of the sale(TCA 67-5-2416). The tax attorney usually makes a motion and an order of reference is signed requiring such. The clerk should then file the report of reference with the court. A court order should be filed approving the report and if the report is filed prior to the sale, this order can also order the property to be sold for the taxes, which would include all taxes due, including those still in the tax collector's office pursuant to T.C.A. 67-5-2506 and 26-5-108(a).

8. DEFAULT JUDGMENT

Once service is had on all defendants, including added parties, the delinquent tax attorney should file a motion for default against those defendants that still have taxes due and owing to the court. A hearing should be set to allow any remaining defendants to appear before the court before a default judgment is entered.

9. ORDER TO SALE

The Decree for Sale should instruct the Clerk to advertise and sell the parcels of land with delinquent taxes still owing. Such sale may be conducted electronically in lieu of public outcry(either type sale but not a combination of both) pursuant to T.C.A. 67-5-2501(a)(1). The legal advertisement is an important duty that the clerk performs. The property must be advertised in one sale notice in the newspaper setting out the names of the owners of the different parcels of land, describing the property and setting out the amount of the judgment against each taxpayer. The description of the property ***must*** reference to 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 so long as the deed book and page reference is accurate. Some clerks record a copy of the sale publication in the Register of Deeds office to insure public notification.

10. DISMISSAL OF PAID TAXES, ETC.

Some clerks enter an order of dismissal just prior to the sale to dismiss the tax even though T.C.A. 67-5-2411 states that those defendants will be automatically dismissed for those that have paid the taxes. An order of dismissal would be necessary on those taxes that are statutorily uncollectable (TCA 67-5-1806). Public Utility taxes and personal property taxes are attempted to be collectable by other means.

11. COUNTY LEGISLATIVE BODY TO ACT PRIOR TO SALE

In order for the clerk not to enter a "forced" bid on behalf of the County, if no other bids are offered, the county legislative body must vote prior to the sale as specified in T.C.A. 67-5-2506, after a determination that such property poses an environmental risk or has financial liabilities associated with the property such that it is not in the best interest of the county to take possession of the property. It might be helpful to supply a list of unpaid tax parcels to the county mayor about 90 days prior to the sale and file an affidavit of such with the court.

12. SALE

The sale must be conducted at the place and time given in the advertised notice or electronically with the specifications in the order to sale. The sale should be public and open to all. A sale should not be

held on a Sunday or a holiday. The court shall order the sale of the property for cash subject to redemption (TCA 67-5-2501). Any person can purchase at a tax sale except those disqualified by statute including persons under a moral obligation to initially pay the taxes. A husband or wife is usually precluded from purchasing the other's property.

The clerk can determine the terms of the sale, paying special attention to any requirements in the order to sale. Some clerks use a sign-in sheet with bidder numbers. At the time for the sale to begin, the clerk should make announcements and introductions before bidding begins and make the procedure clear to all those wishing to participate. Some attorneys do the bid taking and sometimes an auctioneer is used. According to T.C.A. 67-5-2501(a) (2), the clerk shall bid, acting on behalf of the entity or entities prosecuting the suit, in the amount ascertained to be due for the taxes, penalties, interest and costs at the sale if no other bidder offers the same or larger bid. The entity should pay for the property bid in on their behalf at the sale pursuant to T.C.A. 67-5-2510. This will alleviate the burden of the clerk having the unpaid tax on their records. At the end of the redemption period, and the entity becomes the owner of the property, pursuant to TCA 67-5-2507, there is a procedure that the entity may resale that particular parcel, but this is handled exclusively by the county mayor's office.

Some clerks, at the conclusion of each parcel being sold, have the bidder sign a form with information about that particular parcel as well as an acknowledgement clause. In this instance, there is a signed document that can be used in the event a parcel of land which is sold does not get paid for. At the conclusion of the sale all purchasers should settle with the clerk. It will be helpful for the clerk to have a list with all the parcels listed and the amounts due prior to the sale so that it can be noted who purchased a particular tract and for how much.

13. CONFIRMATION OF SALE AND REPORT TO THE COURT

Within five (5) business days after the conclusion of the sale, and prior to confirmation of the sale by the court, the clerk of the court shall immediately file in the case a report of sale or other notice reflecting the results of the tax sale. The clerk of the court shall, concurrently with the filing of the report of sale with the court, also file with the office of the register of deeds of the county in which the property is located, a copy of the report (T.C.A. 67-5-2501(c) (1) and (2)).

An order confirming the sale should be filed with the court. A purchaser may use this decree or order as muniment of title. Some counties will furnish a deed at the conclusion of the redemption period and some will rely on the decree confirming the sale. The deed can be prepared by the tax attorney or by the clerk. The fee for preparing the deed becomes a part of the costs associated with the sale.

Pursuant to T.C.A. 67-5-2503, an order confirming the sale of a parcel shall confer the right to possession of the parcel to the purchaser, effective upon entry of the order.

14. NOTICE OF EXCESS FUNDS

The clerk is required, pursuant to T.C.A. 67-5-2502 (a)(3), to give notice to parties, creditors, or known heirs if the party is deceased, of the amount of the proceeds resulting from the sale, the division of such proceeds, and the remainder. Please note that the statute governing this notice is not specific as to a time for the clerk to complete this task.

15. VOIDING OF A FORCED BID ON BEHALF OF THE COUNTY

The procedure by which the county can ask the court to void a sale to them by and through a "forced bid" entered by the clerk at the sale is detailed in T.C.A. 67-5-2507 (c).

16. REDEMPTION

Upon entry of an order confirming a sale of a parcel, a right to redeem shall vest in all interested persons. Unless the court finds sufficient evidence to order a reduced redemption period, the redemption period for each parcel shall be one (1) year. A redemption period can be reduced by the court based on the period of delinquency, vacancy or abandonment per T.C.A. 67-5-2701. The proceeds from the sale are to be held until after the redemption period. If the proceeds allow, any other property taxes may be paid prior to the end of the redemption period.

If the original property owner or anyone having an interest in the property wishes to redeem, they must come into the clerk's office and file a motion to redeem. Prior to the filing of the motion to redeem, the movant shall pay to the clerk of the court an amount equal to the total amount of delinquent taxes, penalty, interest, court costs, and interest on the entire purchase price paid by the purchaser of the parcel. The interest shall be at a rate of twelve percent (12%) per annum, which will begin to accrue on the date the purchaser pays the purchase price to the clerk and continues until the motion to redeem is filed. If the entire amount owing is not timely paid to the clerk or if the motion to redeem is not timely filed, the redemption shall fail pursuant to T.C.A. 67-5-2701(b). The Clerk has ten (10) days to send notice of the filing of the redemption motion to the purchaser and all persons entitled to redeem pursuant to T.C.A. 67-5-2701(c).

At the demand of the purchaser, the purchaser may be entitled to additional sums for additional ad valorem taxes, insurance, reasonable costs to avoid waste of the parcel, reasonable expenses as a result of a judicial or administrative order, homeowner's association dues, and any additional interest, if any due(T.C.A. 67-5-2701(e)) Any additional funds ordered to be paid by the proposed redeemer shall be paid to the clerk prior to the later of either the expiration of the redemption period or thirty (30) days after the entry of the order allowing the additional funds(T.C.A. 67-5-2701(f)). If the proposed redeemer timely pays the additional amounts, the court shall declare the property to be redeemed (T.C.A. 67-5-2701 (g)). If the proposed redeemer fails to timely pay the additional amounts ordered by the court, the redemption shall fail and any funds paid by the proposed redeemer shall be refunded less clerk's fee and any other costs (T.C.A. 67-5-2701(h)).

17. EXCESS SALE PROCEEDS

Excess funds as a result of a tax sale can be requested by any interested party, following the entry of the order of confirmation, by filing a motion with the court requesting disbursement of any excess sale proceeds pursuant to T.C.A. 67-5-2702 (a). The motion is served no later than thirty (30) days prior to the hearing of the motion. At the hearing, the court shall order any remaining redemption period to be terminated as to the movant as well as any other person who consents to the termination and the excess proceeds paid according to the following priorities to each party that establishes its claim to the proceeds: 1) to the tax entity for any remaining or subsequent taxes that are a lien against the property; 2) to a lien holder holding a claim prior to the sale; 3) to a lien holder holding a claim after the sale; 4) to any taxpayer that was a defendant at the time of the sale; and 5) any remaining excess funds shall be subject to the Uniform Disposition of Unclaimed Property Act (T.C.A. 67-5-2702(c)).

If, at the end of the redemption period, no one has requested the excess sale proceeds, the clerk shall begin the process as they would for any other unclaimed property pursuant to T.C.A. 66-29-110, T.C.A. 66-29-113 and T.C.A. 66-29-115. And if no one is located, the funds would be turned over as unclaimed property.

PERSONAL PROPERTY

Personal property taxes may be collected by filing a lawsuit or the county trustee may retain an agent to collect such taxes, plus interest, cost and fees pursuant to T.C.A. 67-5-2004(b)(1)(A).

1. If COLLECTION IF BY FILING OF LAWSUIT

- A. If personal property collection is pursued in court it is just like any other law suit. Pursuant to TCA 67-5-2410(e) clerks shall not be required to prepare summons or notices, etc. (however, in some counties an agreement can be reached, especially if you have a vendor that can help prepare these documents in less time and the government entities agree to pay the costs).

Delinquent Property Tax suits for personal property taxes can be filed thirty (30) days after they become delinquent but at the very latest should be filed on or before April 1st by the County and Municipalities after they have been delinquent for one year in the office of the tax collector (TCA 67-5-2405). There is no litigation tax in delinquent tax suits and the clerk's fees are set out in T.C.A. 8-21-401.

As soon as possible the information needs to be loaded onto your system. This can be done manually, by media received from the entity or by sharing the information between the vendor used by the court and the vendor from the entity. You could possibly have people wanting to pay on or before the lawsuit is filed. No taxes should be collected by the court until the lawsuit is filed, so it is imperative to get the taxes onto your case management system as soon as possible. Partial payments are not generally allowed except in bankruptcy cases wherein the payments would come from the bankruptcy court.

Some entities choose to retain their personal property taxes as the strongest tool for collection is sought by the tax collector by distraint or distress warrant and/or sale of personal property by garnishment.

B. SERVICE

Defendants are required to be served according to the Tennessee Rules of Civil Procedure. Service can be perfected either by certified mail, personal service by the Sheriff, or constructive service (publication). However, the constitution requires that the defendants be given the **best** notice possible, which has been defined as that "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

It can be helpful to keep an updated record of the service for each defendant. This will be useful at a later date when checking to see who will need to be served by publication and also who was properly served prior to a potential motion for default if the taxes are not paid. Often, after service, defendants will contact the office concerning problems with assessment or a new owner, if a tax was turned over in error or if an error occurred with the assessment. You should notify your delinquent tax attorney immediately so that they can proceed either by adding additional parties or dismissing the tax if it was filed in error. Both actions should require a court order and sometimes a preliminary motion. If new parties are added, service will need to be attempted on them in the same manner as the original defendants. When monitoring service, it

may be necessary to issue alias summons in order to perfect service on the original defendants as well as any other parties that have been added.

If service is needed by publication, a motion should be filed and an order signed directing such as in any other lawsuit. This publication will need to be published for 4 consecutive weeks.

Once service is had on all defendants, including added parties, the delinquent tax attorney should file a motion for default against those defendants that still have taxes due and owing to the court.

C. DISMISSAL OF PARTIES WITHOUT SERVICE

The delinquent tax attorney should file a motion for dismissal of parties that are not before the court or have not been properly served and subsequently obtain an order allowing such. The clerk can remove these individuals from the case management system and show them dismissed.

D. DEFAULT JUDGMENT

The entity may obtain a judgment against those individuals that have not paid their personal property taxes and record a copy of this judgment in the register of deeds office. This will allow the clerk to remove the remaining parties from the case management system and close the file.

E. JUDGMENT COLLECTION

All means allowed under Tennessee Rules of Civil Procedure for collection of a judgment can apply, including garnishments, levies, etc.

PUBLIC UTILITIES

1. FILING OF LAWSUIT

Delinquent Property Tax suits for public utility taxes can be filed should be filed on or before April 1st by the County and Municipalities after they have been delinquent for one year in the office of the tax collector (TCA 67-5-2405) and is usually included with the ad valorem tax suit. There is no litigation tax in delinquent tax suits and the clerk's fees are set out in T.C.A. 8-21-401.

As soon as possible the information needs to be loaded onto your system. This can be done manually, by media received from the entity or by sharing the information between the vendor used by the court and the vendor from the entity. You could possibly have people wanting to pay on or before the lawsuit is filed. No taxes should be collected by the court until the lawsuit is filed, so it is imperative to get the taxes onto your case management system as soon as possible. Partial payments are not generally allowed except in bankruptcy cases wherein the payments would come from the bankruptcy court.

If public utility tax collection is pursued in court it is just like any other law suit. Pursuant to TCA 67-5-2410(e) clerks shall not be required to prepare summons or notices, etc. (however, in some counties an agreement can be reached, especially if you have a vendor that can help prepare these documents in less time and the government entities agree to pay the costs).

2. SERVICE

Defendants are required to be served according to the Tennessee Rules of Civil Procedure. Service can be perfected either by certified mail, personal service by the Sheriff, or constructive service (publication). However, the constitution requires that the defendants be given the **best** notice possible, which has been defined as that "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

It can be helpful to keep an updated record of the service for each defendant. This will be useful at a later date when checking to see who will need to be served by publication and also who was properly served prior to a potential motion for default if the taxes are not paid. Often, after service, defendants will contact the office concerning problems with assessment or a new owner, if a tax was turned over in error or if an error occurred with the assessment. You should notify your delinquent tax attorney immediately so that they can proceed either by adding additional parties or dismissing the tax if it was filed in error. Both actions should require a court order and sometimes a preliminary motion. If new parties are added, service will need to be attempted on them in the same manner as the original defendants. When monitoring service, it may be necessary to issue alias summons in order to perfect service on the original defendants as well as any other parties that have been added.

If service is needed by publication, a motion should be filed and an order signed directing such as in any other lawsuit. This publication will need to be published for 4 consecutive weeks.

Once service is had on all defendants, including added parties, the delinquent tax attorney should file a motion for default against those defendants that still have taxes due and owing to the court.

3. DISMISSAL OF PARTIES WITHOUT SERVICE

The delinquent tax attorney should file a motion for dismissal of parties that are not before the court or have not been properly served and subsequently obtain an order allowing such. The clerk can remove these individuals from the case management system and show them dismissed.

4. DEFAULT JUDGMENT

The entity may obtain a judgment against those individuals that have not paid their personal property taxes and record a copy of this judgment in the register of deeds office. This will allow the clerk to remove the remaining parties from the case management system and close the file.

5. COLLECTION

All means allowed under Tennessee Rules of Civil Procedure for collection of a judgment can apply including garnishments, levies, etc.

TAX STATUTES:

ADDITIONAL COSTS ON DELINQUENT TAXES	67-5-2410(d)-title exam, etc.
ATTORNEY, DELINQUENT, SELECTION	67-5-2404(a) (1)
ATTORNEY TO FILE SUIT –PERSONAL PROPERTY	67-5-2003(g)
ATTORNEY TO RECEIVE UP TO 10% OF SALE PROCEEDS	67-5-2501(3)
ATTORNEY TO RECEIVE 10%	67-5-2506(3)
BIDDERS CAN'T BE OWNERS/ HAVE INTEREST-CJS taxation 890(1954) &Salts vs Salts 190 SW 2d 188 (1945) CLERK	
TO BRING TAXES CURRENT AT SALE	67-5-2409(b) & 67-5-2506
CLERK COMPENSATION FOR DISPURSEMENT OF FUNDS	67-5-2421
CLERK'S NOT TO PREPARE DOCUMENTS	67-5-2410(e)
CLERK SHALL ISSUE PROCESS ON ALL DEFENDANTS, FORTHWITH	TRCP 4.01
CLERK MAY COLLECT MUNICIPAL LIENS WITH TAXES	13-21-103 (6)
CLERK TO BID ON PROPERTY AT TAX SALE FOR ENTITIES	67-5-2501(a)(2)
COLLECTION OF TAXES BY TRUSTEE UNTIL SUIT IS FILED	67-5-2008
COLLECTION OF TAXES BY GARNISHMENT	67-5-2004
CONSOLIDATION OF TAX SUITS, COMPULSORY	67-5-2409
COSTS PER PARCEL, ETC. (44.00)	08-21-401(f) and (c)(8)(add'l notice)
COUNTY, CITY, ETC. TO PAY FOR TAXES BID IN BY CLERK	67-5-2510
COURT'S AUTHORITY TO RENDER JUDGMENTS	67-5-2419
DAMAGES DURING REDEMPTION	67-5-2701(n)
DEEDS (1 YR TO VOID/ 3 YRS FROM CONFIRMATION)	67-5-2504
DEFAULT JUDGMENTS IN TAX CASES	67-5-2418
DELINQUENT PERSONAL PROPERTY TRUSTEE COLLECTION	67-5-2003
DISMISSAL OF TAXES AFTER 10 YEARS & PAYMENT	67-5-1806 & 67-5-2411
DISMISSAL OF PERSONAL PROPERTY TAXES	67-5-2801 (d)
ENVIRONMENTAL RISK	67-5-2501(a)(2)
EXCESS FUNDS-MOTION and PRIORITY	67-5-2702
EXEMPTION FROM TAXATION (GOVERNMENT)	67-5-2509
FEES AND DUTIES OF CLERK	67-5-2410
FEES FOR TAXES WHEN ORDERED TO SELL (100.00 PER PAR)	08-21-401(f)
FILE SUIT IN COURT and PROSECUTION A PRIORITY	67-5-2405 and 67-5-2405 (c)
GARNISHMENT COLLECTION OF TAXES	67-5-2004
INTEREST ON UNDISPUTED TAXES	67-5-2010
INTERESTED PARTY OR OWNER	67-5-2502(C)(1)(B)
JUDGMENTS ON PERSONAL PROPERTY TAXES	67-5-2003(g)
LIEN OF TAXES, DEBT OF OWNER & SUBJECT TO LIEN	67-5-2101(a) & (b); 67-5-2102
LIST FROM COURT, IF REQUESTED BY TRUSTEE	67-5-2403
LIST FROM TRUSTEE TO ATTORNEY TO FILE SUIT	67-5-2404
NOTICE OF SALE OF LAND and EXCESS FUNDS	67-5-2502 AND 67-5-2502(a)(3)
NOTICE TO PURCHASER ON REDEMPTION	67-5-2704
NOTICE TO TAXPAYER OF SUIT AND SERVICE	67-5-245
PARTIAL PAYMENTS TO TRUSTEE	67-5-1801(e)(1)
PERSONAL PROP TAXES, DUTY TO PAY, POST JUDG. INT	67-5-513 AND 47-14-121
POSSESSION PENDING REDEMPTION	67-5-2503
PUBLIC UTILITIES	67-5-1301
QUIET TITLE-IN REM ACTION	29-29-101,102, & 103
RECORD SEARCH BY ATTORNEY & FEE	67-5-2502(c) & 67-5-2502(c) (2)
REDEMPTION PROCESS	67-5-2701-2707 AND 67-5-2502
REDEMPTION BEFORE ORDER of CONFIRMATION ENTERED	67-5-2701(i)
REPORT OF SALE TO BE FILED & RECORDED	67-5-2501 (c)(1) and (2)
SALE OF LAND (in person and electronic)	67-5-2501(a)(1)
SALE OF LAND FOR COUNTY TAXES ONLY & County Purchaser	67-5-2506 & 67-5-2507
SHERIFF'S FEES FOR SERVICE OF DEL. TAX SUMMONS	67-5-2410(c)(1)
TAX SUIT SUBJECT OF T.R.C.P.	67-5-2414
TAXPAYER TO NOTIFY ASSESSOR OF NAME AND ADDRESS	67-5-2502(b)
TAXPAYER TO NOTIFY OF BUSINESS TERMINATION	67-5-513
TENNCARE-OBLIGATION OF ATTORNEY TO NOTIFY	67-5-2502(c)(1)(B)
TRANSFER OF INTEREST DURING REDEMPTION	67-5-2706
WAIVERS OF PERSONAL, REAL AND AT RISK TAXES	67-5-2801, 67-5-2803 & 67-5-2802
WITHDRAWAL OF A PARCEL FROM THE SALE	67-5-2502(a)(6)
WRIT OF POSSESSION-TAX SALE	67-5-25

Tax Summons/Notice-Issues with Service Date: _____

The following taxpayer/business, _____, has issues with service of process because:

- ☐ The taxpayer listed as a defendant no longer owns the property.
- ☐ The summons/Notice was delivered to the wrong person at the address provided.
- ☐ The taxpayer is deceased.
- ☐ The business is no longer in operation and is closed.
- ☐ The business has sold to a new owner and is operating under a new name.

The above information was provided by:

- ☐ Telephone call from _____.
- ☐ _____ came into the office.
- ☐ Notation on return by the sheriff's department
- ☐ US Postal service returned mail as _____.

Additional Information _____

Delinquent Tax Time Chart

	<u>Projected Date</u>	<u>Actual Date</u>
Complaint filed with certified list from County/City	04-01	
Motion and Order to Consolidate City/Co. & previous	04-15	
Motion and Order for Guardian Ad Litem	04-15	
Issue Process with Notice to Sheriff	05-01	
Motion and order to allow fee for record search	06-01	
Record Search to begin	06-15	
Record Search completed and delivered to Clerk	08-01	
Motion and Order to join new owners	08-15	
Obtain new addresses for returned process	08-30	
Issue Alias Summons and process for new owners	09-01	
Copies of Letters to Lienholders/TennCare or affidavit to ct.	09-01	
Motion and Order for Service by Publication	10-15	
Notice in Paper for service-runs 4 weeks	11-01	
Take list to Co. Mayor and file affidavit w/ court	01-01	
Motion and Order for Default	01-15	
Newspaper Article on pending sale	01-20	
Motion and Order for Reference	01-30	
Clerk's Report of Reference filed	02-15	
Order confirming report and ordering Sale	03-01	
Prepare Tax Sale Notice with list of taxpayers	03-15	
Advertise Sale at least 3 weeks prior-for one week	03-15	
Dismissal of paid and statutory limitation taxes	04-01	
Attorneys to file copies of Lienholders' Sale Notice	04-01	
Tax Sale	04-15	
Clerk's Report of Sale	05-01	
Clerk to Record copy of Sale Report with Register	05-01	
Order Confirming Report and Sale	05-15	
Notice to Previous Owner/Lien holder of proceeds	06-01	
DT Attorney to prepare deeds after redemption		

Delinquent Personal Property Tax Time Chart

	Projected Date	Actual Date
Complaint filed with certified list from County/City	04-01	
Issue Process to Sheriff	04-15	
Obtain new addresses for returned process	06-01	
Issue Alias Summons	06-15	
Motion and Order for publication-runs 4 weeks	08-01	
Dismissal of parties with no service	08-01	
Motion and Order for Default	10-01	
Record Certified Copy of Default with Register	11-01	
Remove Taxes from Computer and close file	11-15	
Prepare List for File	12-01	

UNPAID TAXES LEAD TO UPCOMING AUCTION

There are approximately --- parcels of land to be sold in the upcoming county and city delinquent property tax sale, according to _____ County's Clerk and Master. The parcels will be auctioned off at the Lincoln County Courthouse in a few weeks, however, a specific date and time has not been set. A legal notice will be published in the _____ closer to the time of the sale with the particular parcels as well as a specified date. M _____ stressed that officials are still hoping owners will pay the taxes before the auction becomes necessary. The parcels of land offered to be sold are for the _____ tax year as well as any other previous years' taxes which may still be due.

"Neither the Clerk and Master, _____ County nor the City of _____ wants to sell property for delinquent taxes, but that is the only way to collect some taxes," she said. "It would be great if a sale weren't necessary." The owners will already have additional fees to pay because interest is added for each month taxes go unpaid past the due date, she added. And now that the taxes have been transferred to her jurisdiction, the owners will have to pay legal fees as well. The office takes several steps to insure property owners are made aware that their land is in danger of being sold, she said. Notices were issued to the _____ County Sheriff's Department where the owners were served and/or notice was posted on the property. Additionally, non-resident owners were sent a notice by certified mail followed by a legal notice published in the _____ for four consecutive weeks for those non-resident owners as well as all other owners that her office was unable to locate. Efforts to find current owners include reviewing information at the property assessor's office, she added, as well as notifying any lien holders on those parcels having recorded liens of the pending sale.

Even if the land is sold, owners, lien holders or those having an equitable interest will have one year to redeem the property before the sale is final, Ms. _____ explained. People interested in bidding should investigate the property before making a purchase. "The Clerk and Master gives no warranties on property bid on or sold at the sale," she said stressing the word "no". It is the buyer's responsibility to know what he or she is bidding on."

People wanting more information can see Ms. _____ at her office in the _____ County Courthouse or call _____.

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE

LINCOLN COUNTY, CITY OF FAYETTEVILLE AND TOWN OF PETERSBURG
VS. CIVIL ACTION NO: 15259
2017 AND 2018 DELINQUENT TAXPAYERS

In this cause, it appearing from the complaint and from the return of process issued that the whereabouts of : Afton Resources Center c/o Bonnie Sasher, A/K/A Bonita, Charlotte Pinkston, Carolyn Nelson; Known and Unknown Heirs of Dorothy Jean Allen, Anthony Jerome March, Charlie Jean March; Known and Unknown Heirs of Ruth Askins; Associates Financial; Paul D. and Cora Jean Baker; Known and Unknown Heirs of Margaret E. and Darrin Gene Bowden; Known and Unknown Heirs of Mary Jane Conley; Commonwealth Management Trust Irrevocable Pure Trust; Peggy Covey; Patricia Lee Durham; Known and Unknown Heirs of A.C. Eddins ; Lillie D. Higginson, et.al now Brandon Foxx; Emmett R. Johnson; Kelly Transport Inc. (Public Utility); James Wayne Mason; Dennis McBay; David A. McGough and Shelly D. McGough; Paulette E. McMahan ;Phillip W. and Crystal Montgomery; Rebecca Moorehead, Paula Moorehead and Jason Moorehead; Petersburg Community Center; PMC Property Management LLC. ; Known and Unknown Heirs Of Mary Hall Porter ; Dorothy Reed; Betty Reese; Mark J. and Rose Rich; Mark Wayne Rich; Known and Unknown Heirs of Paul and Julia Robinson; Donald L. and Helen E. Smith; Miles Smith; Alan Spearman; Jason William and Melissa Ann Sullenger and Dorothy Sullenger; Wysenta Talley; Tanner Properties LLC.; Known and Unknown Heirs of W.C.Taylor; Sandra B. Thomas; Mary M. Thornton; Anthony Travis; Teresa Williams Vandiver; Tyra Young; Steve E. Zellers and Aneta Reed c/o LH Trust are unknown and cannot be ascertained after diligent inquiry, that they and each of them are hereby required to appear and answer or otherwise defend against the complaint filed against them in this cause by the plaintiff's attorneys who are William E. Simms Lincoln County and the town of Petersburg Attorney, 104 Main Avenue North, Fayetteville Tennessee 37334 and Johnny D. Hill Jr. Fayetteville City Attorney, 205 East Market Street, Fayetteville Tennessee 37334 within 30 days after the last publication of this Notice, otherwise default judgment may be entered against them for the relief demanded in the complaints. If any of the defendants do not file an answer, a hearing on a motion for default judgment shall be heard on **January 12th 2021 at 9 a.m.** It is further ordered that this Notice shall be published for four (4) consecutive weeks in The Elk Valley Times, a weekly newspaper of general circulation in Fayetteville, TN.

This 18th day of November 2020 -
Rebecca N. Carpenter
Clerk and Master

William E. Simms., County Attorney
Johnny D. Hill, Jr., City Attorney
John H. Richardson, Jr., GAL

**IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE
AT FAYETTEVILLE**

**LINCOLN COUNTY, TENNESSEE and
CITY OF FAYETTEVILLE**

Plaintiffs

Vs.

Consolidated Civil Action No. 15259

**DELINQUENT TAXPAYERS as shown on
the 2017-18 Real Property Delinquent Tax
Records of Lincoln County, Tennessee and
City of Fayetteville, Tennessee**

Defendants

REPORT ON REFERENCE

In obedience to an Order of Reference heretofore entered in this cause on the 6th day of April, 2021 in Minute Book 182, page 163, commanding me to report on the matters mentioned therein, I respectfully report as follows:

The names and addresses of the owners, as of the applicable assessment dates, of such property, the names and address of present owners in different, legal description of said property and whether real estate is encumbered and if so, the nature and amounts of the encumbrances and names and address of the owners thereof:

LINCOLN COUNTY TAXES:

- **Afton Resources Center** -- DISTRICT # 8, MAP #906, GROUP # , CONTROL MAP # 001.00, ID , SI000.

Property Address: Eldad Road

Mailing Address: 209 S Jefferson St, #16, Winchester, TN 37398

Mailing Address: c/o Bonnie Sasher aka Bonita, P. O. Box 1250, Fayetteville, TN 37334

Mailing Address: 392 Highlands, Union Grove, AL 35175

Base Tax Due: \$2,874.00

Amount Tax Due as of April 1, 2021: \$4,557.25

Deed Book Y14, page 573 and Deed Book B13, page 57

Lien Holders: The Harrogate Foundation, 118 W. Main St., Westfield, PA 16950, recorded February 28, 2002 in Trust Deed Book 445, page 312

Year: 2018

- **Thomas, Michael D. Etux Sandra B.** -- DISTRICT # 5, MAP # 43 I, GROUP # B, CONTROL MAP # 43 I, PARCEL # 27.00, ID , SI 000.

Property Address: 575 Lynchburg Highway

Mailing Address: 575 Lynchburg Hwy, Mulberry, TN 37359

Base Tax Due: \$1,447.00

Amount Tax Due as of April 1, 2021: \$2,503.62

Deed Book S13, page 442

Lien Holders: (a) An abstract of judgment of General Sessions Court of Davidson County, Tennessee by Access Control System, Inc., c/o Phillip W. Duer, 1304 Red Oak Drive, Brentwood, TN 37027 dated April 16, 2015 and recorded April 22, 2015 in Misc. Book 77, page 238. (b) A judgment of Lincoln County General Sessions Court by Ford Motor Credit Co., c/o Stone & Hinds, LLC, 507 Gay St. SW, Suite 700, Knoxville, TN 37902, dated May 25, 2010 and recorded in Misc. Book 66, page 723. (c) A judgment of Lincoln

County General Sessions Court by FIA Card Services, N.A., c/o Graham, Knight & Hogen, P.O. Box 11583, Chattanooga, TN 37401-2583, dated September 18, 2012 and recorded October 30, 2012 in Misc. Book 71, page 461. (d) A judgment of Giles County General Sessions Court by Kenny and Phyllis Fralix, c/o M. Andrew Hoover, 134 N Second St, Pulaski, TN 38478 and P. O. Box 52, Elkton, TN 38455 dated October 3, 2016 and recorded in Misc. Book 80, page 422. (e) Federal Tax liens recorded in FTL Book 2, page 839, FTL Book 2, page 878, FTL Book 2, page 929, FTL Book 2, page 966, FTL Book 3, page 63, FTL Book 2, page 855, FTL Book 2, page 889, FTL Book 2, page 953, FTL Book 3, page 26, FTL Book 3, page 76, FTL Book 2, page 957, FTL Book 3, page 46, FTL Book 3, page 82, FTL Book 3, page 57, FTL Book 3, page 91 and FTL Book 3, page 123. (f) Notice of State Tax lien dated September 24, 2018 and recorded in Misc. Book 84, page 262 and Misc. 88, page 700. (g) A deed of trust of First Bank, 211 Commerce St., Ste. 300, Nashville, TN 37201 recorded on February 10, 2020 in TD Book 792, page 842.

Year: 2018

Respectfully submitted,

**Rebecca N. Carpenter,
Clerk and Master**

TAX SALE OF REAL ESTATE

LINCOLN COUNTY, TENNESSEE and
CITY OF FAYETTEVILLE, TENNESSEE

Consolidated Action No: 15259

VS.

DELINQUENT TAXPAYERS 2017 AND 2018

In obedience to a decree of the Chancery Court of Lincoln County, Tennessee made in the above styled cause, I will on **Wednesday, June 23, 2021 at 10:00 a.m.** and continuing from day to day if necessary, at the Chancery Courtroom in the basement of the Lincoln County Courthouse in the town of Fayetteville, Tennessee, sell to the highest and best bidder for cash, subject to the right of redemption as fixed by law, and to liens of subsequent tax years, the following parcels, of real estate owned by the Defendants in the amount of judgment liens **plus INTEREST, STATUTORY ATTORNEY'S FEES AND COSTS** as provided by law, against their property in favor of **Lincoln County, Tennessee and City of Fayetteville for the taxes for year 2017 and 2018** (as well as previous years that are now collectable) as set forth opposite their names, to wit:

Afton Resources Center-2018 County
8th Civil District of Lincoln County, Tennessee
Map 906, Parcel 1.00,
Deed Book Y-14, page 573
Property Address: Eldad Road

****\$4930.97**

Askins, Ruth-2018 County
8th Civil District of Lincoln County, Tennessee
Map 68, Ctrl Map 68, Parcel 31.00,
Deed Book C-6, page 82, Deed Book G-7, page 393
Property Address: 211 Shelbyville Highway

****\$ 935.15**

****Pursuant to Tennessee Code Annotated 26-5-108(a) and 67-5-2506 any and all taxes that are due on the real property shall be collected at the sale therefore, the initial bid amount will include all amounts due and, pursuant to a court order, any excess funds collected may be applied to subsequent years' taxes which may become due during the redemption period.**

OUR OFFICE WILL ONLY BE ACCEPTING CASH OR CERTIFIED FUNDS FOR THE PAYMENT OF THESE TAXES THROUGH JUNE 22, 2021.

This the 2nd day of June, 2021
Rebecca N. Carpenter, Clerk and Master

William E. Simms, Lincoln County Attorney
Johnny D. Hill, Jr., City of Fayetteville Attorney
John H. Richardson, Jr. Guardian Ad Litem

PURCHASER INFORMATION FORM

**LINCOLN COUNTY, TENNESSEE, and
CITY OF FAYETTEVILLE, TENNESSEE**

VS.

Consolidated Civil Action No: 14424

DELINQUENT TAXPAYERS 2013

PROPERTY OWNER: _____

MAP/PARCEL: _____ **DEED BOOK:** _____

Property Address: _____ **Phone#** _____

PURCHASER (BIDDER) NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

TOTAL TAX AMOUNT: _____
(PAYMENTS)

County 2013: _____ **City 2013:** _____

County 2014: _____ **City 2014:** _____

County 2015: _____ **City 2015:** _____

BID AMOUNT: _____

-Payments: _____

=OVERAGE: _____

-County 2016: _____ **City 2016:** _____

-County 2017: _____ **City 2017:** _____

Decree of Sale: _____

FINAL OVERAGE: _____

I hereby acknowledge receiving a copy of TCA Code 67-5-2701 - 67-5 2706 regarding delinquent property tax sales. I also understand the Clerk & Master makes no warranties or representations as to the description or status of the title to the properties being sold in said tax description and to have physically examined the property being sold. Furthermore, I understand that no survey has been performed of the property being sold and that the Property Assessor's tax maps are not a guarantee of the property description or amount of acreage. I also understand that if I am a successful bidder and decide to make any improvements to the property I purchase during the one (1) year redemption period, it is my sole responsibility to petition the court for reimbursements of said expenses. Neither the Clerk & Master nor the tax attorney will assist in petitioning the court for reimbursement.

Purchaser/Bidder Signature

Date

IN THE CHANCERY COURT OF LINCOLN COUNTY, FAYETTEVILLE, TENNESSEE

LINCOLN COUNTY, TENNESSEE,
and CITY OF FAYETTEVILLE, TENNESSEE,

Plaintiffs,

Vs.

CIVIL ACTION NO. 15259

DELINQUENT TAXPAYERS,

Defendants.

CLERK'S REPORT OF SALE

In obedience to the Order of Reference and Order of Sale heretofore made by the Court, the Clerk and Master respectfully reports as follows:

1. I caused said publication to be made as required by the decree.
2. That in conformity with said publication, on Wednesday, June 23, 2021, at 10:00 a.m., I proceeded to sell said properties advertised by the publication, which had not been previously paid. Said sale was an on-line auction conducted by GovEase, a reputable company which conducts delinquent property tax sales for courts in the State of Tennessee. A copy of the legal publication was posted on the website and each potential bidder was required to complete a bidder verification form, a W-9 form and an acknowledgment form detailing the terms and conditions of the sale. Once the forms were completed, the potential bidder was required to submit to the court proof of the amount of funds that bidder was allowed to offer.
3. A list of the parcels sold and the purchase details for each parcel are attached hereto as Exhibit 1.

The sale was made subject to all subsequently accruing taxes and prior taxes on said property and all bidders complied with the terms of the sale.

Respectfully submitted this _____ day of June, 2021.

Clerk and Master

IN THE CHANCERY COURT OF LINCOLN COUNTY, FAYETTEVILLE, TENNESSEE

**LINCOLN COUNTY, TENNESSEE,
and CITY OF FAYETTEVILLE, TENNESSEE,**

Plaintiffs,

Vs.

CIVIL ACTION NO. 14903

DELINQUENT TAXPAYERS,

Defendants.

CLERK'S REPORT OF SALE

IN OBEDIENCE to the Order of Reference and Order of Sale heretofore made by the Court, the Clerk and Master respectfully reports as follows:

- 1. I caused said publication to be made as required by the decree.**
- 2. That in conformity with said publication, on Wednesday, May 29, 2019 in the Chancery Courtroom located in the basement of the Lincoln County Courthouse in the town of Fayetteville, Tennessee, I proceeded to sell said properties advertised by the publication which had not been previously paid. A copy of the legal publication was distributed to those in attendance.**
- 3. That the following is a list of the taxpayers with the amount of County and/or City taxes set forth opposite their respective names as owners thereof, as bid in by individuals as set forth below:**

3rd District :

Dickey, Joe Wayne Jr.

DISTRICT # 3, MAP # 130, GROUP # , CONTROL MAP # 130, PARCEL # 39.02, ID , SI 000.

Property Address: 15 Watermill Road

Starting Bid of \$ 915.32 and a final bid of \$3,600.00 by Cleo and Deleace Walden

8th District :

Harper, Clin Howard and the Known and Unknown Heirs of Clin Howard Harper

DISTRICT # 8, MAP # 79 K, GROUP # B, CONTROL MAP # 79 G, PARCEL # 009.00, ID , SI 000.

Property Address: 1012 Locust Street

Starting Bid of \$1,187.12 and a final bid of \$2,500.00 by Peggie J. Bean

The sale was made subject to all subsequently accruing taxes and prior taxes on said property and all bidders complied with the terms of the sale.

Respectfully submitted this _____ day of May, 2019.

Clerk and Master

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE:

LINCOLN COUNTY, TENNESSEE AND
THE CITY OF FAYETTEVILLE, TENNESSEE
PLAINTIFFS,

VS
DELINQUENT TAXPAYERS 2013,
DEFENDANTS

NO: 14424

NOTICE OF SALE EXCESS FUNDS

To: The Bank of New York Trust Company, N.A.
C/O Wilson & Associates
1521 Merrill Drive, Suite D220
Little Rock, Arkansas 72211-9808

PLEASE TAKE NOTE THAT ON the 23rd day of March, 2016, a delinquent property tax sale occurred involving the following property:

Recorded Property Owner at the time of sale:
Property Address:
District , Map , Parcel
Deed Book Pg Case#

Pursuant to Tennessee Code Annotated 67-5-2502, notice is hereby given of the excess funds collected on the above stated property.

The total amount bid in at the delinquent property tax sale	\$
The total amount of delinquent taxes due for which property was sold	\$
The total amount of other taxes paid which were due at the time of the sale	\$
The total amount of fees paid for recording the Decree of Sale	\$
Leaving excess funds in the amount of	

Pursuant to Tennessee Code Annotated 67-5-2701, et seq., **YOU HAVE THE RIGHT TO REDEEM THE PROPERTY DESCRIBED ABOVE.** The redemption period can range from 30 days up to 1 year depending on the circumstances of the parcel sold. If you wish to redeem the above referenced property, please contact our office at 931-433-1482. Any excess funds, after the payment of any other taxes which may become due within the redemption period, will be distributed after one year, or sooner upon request, following the entry of the order confirming the sale. **However, IF YOU WISH TO CLAIM THE EXCESS FUNDS PRIOR TO THE EXPIRATION OF THE REDEMPTION PERIOD, you may do so by application to the Chancery Court of Lincoln County.**

This _____ day of _____, 2016.

Rebecca N. Carpenter, Clerk & Master

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE:

LINCOLN COUNTY, TENNESSEE,
THE CITY OF FAYETTEVILLE, TENNESSEE,
AND THE CITY OF PETERSBURG, TENNESSEE,
PLAINTIFFS,

VS

NO. _____

DELINQUENT TAXPAYERS,
DEFENDANTS.

MOTION TO REDEEM PROPERTY

Comes now, _____, having paid the amounts prescribed in T.C.A. 67-5-2701 (b), and moves this Honorable Court for an order allowing a redemption on the following described property:

Property Owner at the Time of the

Sale: _____

Property Address: _____

District _____, Map _____, Group _____, Ctrl Map _____ Parcel _____

Recorded in Deed Book _____, page _____.

I hereby state that I am entitled to redeem the above described property, as evidenced by the attached documents; the property having been sold for delinquent property taxes on _____, with order confirming said sale entered on _____, to be redeemed for the following reason:

Check one:

- _____ (1) I am the taxpayer and/or the owner of a legal interest in the property
_____ (2) I am the owner of an equitable interest in the property.
_____ (3) I am a creditor of the taxpayer or have lien on the property.

Respectfully Submitted this ____ day of _____, _____.

Name: _____

Address: _____

MOTION IS EXPECTED TO BE HEARD ON: _____

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Motion has been served on all parties or counsel of record at their last known address.

This _____ day of _____, _____.

Clerk and Master

*** Please note that pursuant to T.C.A. § 67-5-2701(c) and (d), the Clerk shall mail a notice to the purchaser of this Motion to Redeem within ten days of its filing. The purchaser then has thirty days from the date the notice was mailed to file a response seeking reimbursement from you for expenses allowed by T.C.A. § 67-5-2701(e). If the purchaser timely files such response, the Court will set a hearing on this motion and the purchaser's response, and send you and the purchaser a Notice of Hearing. If the purchaser does not timely file such a response, the Court will determine whether the redemption appears to be proper from this Motion, and will either set a hearing on this Motion and send you a Notice of Hearing, or enter an order declaring the redemption to be complete.**

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE:

LINCOLN COUNTY, TENNESSEE,
THE CITY OF FAYETTEVILLE, TENNESSEE,
PLAINTIFFS,

VS

NO. _____

DELINQUENT TAX PAYERS,
DEFENDANTS.

Order Allowing Redemption

This cause came on to be heard on the _____ day of _____, _____ before the Honorable J. B. Cox, sitting as Chancellor for the Chancery Court of Lincoln County, Tennessee upon a motion to redeem real property sold by this honorable court and the entire record in this civil action.

It appearing that the real property described as _____, Dist. ____, Map No ____, Parcel No ____, CTL__ Deed Book ____, page ____, was sold by the Chancery Court for collection of Delinquent Property Taxes on the ____ day of _____, 20____, with the order confirming this sale entered on the ____ day of _____, 20____ to the following person(s) _____ ("purchaser").

It further appearing that pursuant to T.C.A. 67-5-2701, _____ filed a motion to redeem the above described real property as _____.

It further appearing that the motion is well taken.

THEREFORE, IT IS ORDERED, that once the additional interest and or other charges listed below, if any due, that were paid by the person requesting the redemption, the above described real property shall be redeemed and all the right, title and interest of the purchaser to the said parcel of land be divested out of purchaser and be vested in _____.

It is further ordered that the purchaser be refunded the purchase amount, interest as of the date of filing the motion to redeem, additional interest in the amount of \$_____, and other lawful charges as allowed by law in the amounts of _____.

This _____ day of _____, _____.

J. B. Cox, Chancellor

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Order has been forwarded either by hand delivery or by U.S. Mail postage prepaid to all parties or counsel of record at their last known address.

This _____ day of _____, _____.

Clerk and Master

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE:

LINCOLN COUNTY, TENNESSEE AND
THE CITY OF FAYETTEVILLE, TENNESSEE,
PLAINTIFFS,

VS

NO. _____

DELINQUENT TAX PAYERS,
DEFENDANTS.

Order Denying Motion to Redeem

This cause came on to be heard on the _____ day of _____, _____ before the Honorable J. B. Cox, sitting as Chancellor for the Chancery Court of Lincoln County, Tennessee upon a motion to redeem real property sold by this honorable court and the entire record in this civil action.

It appearing that the real property described as _____, Map No _____, Parcel No _____, Deed Book _____, page _____, was sold by the Chancery Court for collection of Delinquent Property Taxes on _____.

It further appearing that pursuant to T.C.A. 67-5-2701, _____ filed a motion to redeem the above described real property as a _____.

It further appearing that the motion is overruled.

THEREFORE, IT IS ORDERED, that the above described real property shall continue to be held by the purchaser, _____, for the remainder of the redemption period prescribed by law.

IT IS FURTHER ORDERED that _____ shall be refunded the amounts that were paid at the time the motion was filed, less any costs and other amounts allowed by law.

This _____ day of _____, _____.

J. B. Cox, Chancellor

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Order has been forwarded either by hand delivery or by U.S. Mail postage prepaid to all parties or counsel of record at their last known address.

This _____ day of _____, _____.

Clerk and Master

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE:

LINCOLN COUNTY, TENNESSEE AND
THE CITY OF FAYETTEVILLE, TENNESSEE,
PLAINTIFFS,

VS

NO. _____

DELINQUENT TAXPAYERS,
DEFENDANTS.

MOTION TO CLAIM EXCESS FUNDS

Comes now, _____, and moves this Honorable Court for an order allowing excess funds received on the following described property at a delinquent property tax sale:
Property Owner at the Time of the Sale:

Property Address: _____
District _____, Map _____, Group _____, Ctrl Map _____ Parcel _____
Recorded in Deed Book _____, page _____.

I hereby state that I am entitled to claim the excess funds, as evidenced by the attached document(s); the property having been sold for delinquent property taxes on _____. I request that any costs due for filing this motion be deducted from the amounts due to me. I further hereby waive my right to redeem the above referenced property.

Respectfully Submitted this ____ day of _____, _____.

Name: _____

Address: _____

MOTION IS EXPECTED TO BE HEARD ON: _____

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the foregoing Motion has been served on all parties or counsel of record at their last known address no later than 30 days prior to the hearing.

This ____ day of _____, _____.

Clerk and Master

Successor Administrator of the Estate of Joe Wayne Dickey, Jr., deceased.

IT IS SO ORDERED this ____ day of _____, 2019.

J. B. COX, CHANCELLOR

CERTIFICATE OF SERVICE

I do hereby certify that on the ____ day of _____, 2019, a true and exact copy of the foregoing Order has been forwarded either by hand delivery or by U.S. Mail postage prepaid to all parties or counsel of record at their last known address.

Rebecca N. Carpenter, Clerk and Master

7. On or about August 20, 2019, an Order to Pay Excess Funds from a Delinquent Tax Sale was presented to the Court for approval and the order was signed and entered in Chancery Minute Book 173, page 774. The aforementioned order required payment of the excess funds to Michael Sullivan after the payment of outstanding taxes, fees and cost.

8. On or about September 04, 2019 Redstone Federal Credit Union filed an Application for Excess Funds and requested that the matter be placed on the court's September 10, 2019 docket. An order was sent to the court prior to the hearing however no one appeared on behalf of Redstone Federal Credit Union on September 10, 2019.

9. Based on these facts, the Court finds that the order dated August 20, 2019 remains in full force and effect. Therefore, the said excess funds, currently in the hands of the court, less any remaining taxes, fees and cost, should be paid to Michael Sullivan as previously ordered by this Honorable Court.

Based upon these findings, IT IS HEREBY ORDERED THAT:

C. The Application for Excess Funds is DENIED;

D. The remaining excess funds, after all remaining taxes, fees and cost, in the amount of \$9,491.32 shall be paid to Michael Sullivan.

IT IS SO ORDERED this ____ day of _____, 2019.

J. B. COX, CHANCELLOR

CERTIFICATE OF SERVICE

I do hereby certify that on the ____ day of _____, 2019, a true and exact copy of the foregoing Order has been forwarded either by hand delivery or by U.S. Mail postage prepaid to all parties or counsel of record at their last known address.

Rebecca N. Carpenter, Clerk and Master

General Sessions

- Commencement of a Civil Action
- Traffic Court
- Basic Jury Issues (Civil & Criminal)
- Grand Juries

CIVIL ACTIONS IN GENERAL SESSIONS

(As a reference it is recommended that each clerk possess

A Tennessee General Sessions Handbook

by Hon. G Andrew Brigham and Thomas B. Norris, Jr., Esq.
2009 M. Lee Smith Publishers LLC, 5201 Virginia Way, Brentwood, Tn. 37024-5094)

Courts of General Sessions are addressed in T.C.A. 16-15-101 through 16-15-905

Clerks--Powers and Duties; records (T.C.A. 16-15-303)

Tennessee case law has held that where the Tennessee Rules of Civil Procedure are not applicable to courts of General Sessions (absent governing sessions-specific statute), the common law relating to procedure does apply. ¹

1. Commencement of a Civil Action:

A civil action in the General Sessions Courts is commenced by a civil warrant issued by the clerk of the court of the issuing county. Forms are available on the Administrative Office of the Courts' website or the issuing Clerks' office.

It is the official duty of the clerk 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. ² (Court costs as applicable are found in T.C.A. 8-21-401)

Civil Actions consist of:

- 1 Civil Warrants/Summons
- 2 Writs
- 3 Summons for Possessory
- 4 Attachment & Summons
- 5 Detainers

Service of Process:

T.C.A. Code—16-15-901; 16-15-902; 16-15-903; 16-15-904

Sheriff's Service

Private Process Servers

Certified Mail

Secretary of State

Publication

¹Tennessee General Sessions Handbook 2009 (pg. 86)

²15 A Am. Jur.2d "Clerks of Court

Filing Documents:

A civil action in the General Sessions Courts is commenced by a civil warrant issued by the clerk of the court of the issuing county. Issuance of original process in civil actions may not be accomplished until the Clerk has received the filing fees. (T.C.A. 16-15-718)

Setting Case on Docket:

Courts have scheduled civil days; therefore, allowing attorneys or individuals to choose a date to be entered on the summons prior to service.

Entry of Judgment

Upon disposition of Case the judgment is entered in Rule Docket

Appeals

An appeal can be made to the Circuit Court within 10 days. T.C.A. 27-5-101; 108

Acts of Congress/Exemplified Certification (28 United States Code Annotated Sec.1738)

There is a form for this process which is often referred to as the “clerk and judge form”.

Revival of Judgment/Extension of Time

If a judgment has not been satisfied, the party for whom the judgment was granted commence revival within 10 years from the date judgment was entered. (Tennessee Rule of Civil Procedure 69.04 as referenced in T.C.A. 25-4-101)

Joint & Several Liability

T.C.A. 20-1-107

Where two or more persons act in concert, it is well settled...in civil cases that each will be liable for the entire result. In legal contemplation, there is a joint enterprise, and a mutual agency, so that the act of one is the act of all, and liability for all that is done is visited upon each.¹

Garnishments & Executions

The procedures by which an individual’s earnings may be withheld to satisfy a debt. (T.C.A. 26-2-102(3); T.C.A. 29-6-129)

Subpoenas

Civil charge up front—T.C.A. 16-15-718

Showcause Orders

Orders issued serving an individual for a court appearance

¹Tennessee General Sessions Handbook 2009 (pg. 71)

Slow Pay Agreements (Motion to Pay by Installments)

T.C.A. 26-2-216

TRAFFIC COURT IN GENERAL SESSIONS

(As a reference it is recommended that each clerk who has a large traffic docket purchase *Tennessee Motor Vehicle Laws Annotated*, by LexisNexis)

E-Citations

A.Importing E-Citations:

- Go to "Criminal"
- Go to "Import Citations"
- Click "Find Now"
- Choose Date and Open
- Check for Errors
 - If error, go to "view attachment" & fix error
- Click "open all attachments for all imported cases" at the top
- Place back of citations in printer and print all citations in the batch
- Check citations for any criminal dates and put with criminal charge
 - Citation which will be handwritten
- Optional-you can fill out backs of citations with case number, charge, etc.
- Check citation for second or more offenses: seatbelt, 9 or less speeding, CMV Speeding, and CRD under 9 years of age (these have to be manually changed in the system because they will only import as regular speeding-some charges Make a difference in the cost when disposed of).
- Separate citations by trooper and file with specific court date.

B.Hearing Results, Payments and Clearances:

Failure to Appear:

- Go to "Hearings"
- Click on particular hearing
- Click on "Record Hearing Results" at the bottom left
- Choose "Failure to Appear-Criminal"
- Enter the current date for "Date Resulted"
- Follow prompts to finish

Failure To Pay:

- Add a payment agreement by going under tasks in right hand corner and go to “add a payment agreement” and follow the prompts
- Put in party name, payment schedule, date to begin, due date, and amount.
- Follow prompts to finish

Electronic Clearances:

- Contact the Tennessee Department of Safety to set up a user name and password for Court Disposition Recording Website (Tennessee.Gov)
- Log in and choose “General Sessions” Court
- Go To “Failure to Appear/Pay Processed Records”
- Locate defendant by last name, citation number, or license number
- Choose “New” by defendant’s name
- Choose FTA or FTP
- Enter the Satisfied Date and remove either the “W” and “V” letters or the first three numbers of the ticket number (if e-citation)
- **Note:** The website will only allow submission of seven digits
- After submission, click on “Return” at the far right
- Go back to “Failure to Appear/Pay Processed Records” but this time select “New”
- Print a copy of the electronic clearance (if the Tennessee Department of Safety does not receive an electronic clearance, a copy can be faxed to them)

Jury

- Right to a Jury
- Jury Coordinator & OATH
- Jury Pool & Selection
- Jury Pool Report
- Jury List Publication
- Juror Qualifications
- Jury Summons
- Juror Excuse/Exemptions
- Jury Orientation
- Postponement of Jury Service
- Juror Compensation
 - Employed Juror
 - Excused work absence
 - Juror's paycheck
 - Statement of Jury Service
 - Donation of Jury pay to Criminal Injuries Compensation Fund
- Juror Examination & Seating Jury
- Trial Procedures
 - OATHS for:
 - Jurors
 - Court Officers
 - Witness or Defendant
 - Note taking/Juror Questions
 - Forms
- Grand Juries

GUIDE for TENNESSEE CLERKS of COURT

Basic JURY ISSUES (for Civil & Criminal cases)

TABLE OF CONTENTS

Right to a Jury.....	2
Jury Coordinator & OATH.....	3
Jury Pool & Selection.....	4
Jury Pool Report.....	4
Jury List Publication.....	5
Juror Qualifications.....	5
Jury Summons.....	5
Juror Excuse/Exemptions.....	6
Jury Orientation.....	7
Postponement of Jury Service.....	7-8
Juror Compensation.....	8-9
Employed Juror.....	9
o Excused work absence.....	9
o Juror's paycheck.....	9
o Statement of Jury Service.....	9
Donation of Jury pay to Criminal Injuries Compensation Fund.....	9
Juror Examination & Seating Jury.....	9-10
Trial Procedures	10-11
<u>OATHS</u> for:	
Jurors.....	10
Court Officers.....	11
Witness or Defendant.....	10
Note taking/Juror Questions.....	11
Forms:	15-18
(Jury Selection Chart; Peremptory Challenges Submission Slip Form; Verdict Form)	
Grand Juries.....	12

Note following reference, regarding citations:
Tennessee Code Annotated = T.C.A.
Tennessee Rules of Civil Procedure = Tenn. R. Civ. P.
Tennessee Rules of Criminal Procedure = Tenn. R. Crim. P.

Basic JURY ISSUES (for Civil & Criminal cases)

The **Circuit Court Clerk** may supply the jury to the Chancery Court **Clerk & Master**, in certain Judicial Districts in Tennessee; however, in all counties of this state, regardless of population, jurors required to try issues of fact in the chancery or other court, not supplied with regular jurors, may be summoned instanter, by order of the court. See T.C.A. § 22-2-312

Clerk TIP: It is common that the Clerk & Master may use the jurors of the Circuit and/or Criminal Court of the County.

T.C.A. § 22-2-101. Application of chapter **{Effective Date: July 1, 2011}**

(a) This chapter applies to all grand and petit juries in all circuit and criminal courts of this state. This chapter also applies to any law court in any of the counties.

(b) Except as provided in § 22-4-101 **{JURY COMPENSATION}**, **every private act enacted in this state touching in any way upon the subject of juries, jurors or jury commissioners is repealed in its entirety.**

(c) The jury selection methods in the Chancery Courts of this state shall not be affected in any way by this chapter, except as provided in § 22-2-312 {Selection & summons when no jury pool provided.}

Acts 2011 ch. 209, §1 deleted §22-2-101(b)(1)and(2), effective July 1, 2011. Since §22-2-101(b)(1)and(2) have been deleted, this chapter is no longer only effective in certain counties, and jurors and jury panels for the counties formerly referenced in §22-2-101(b)(1) shall no longer be selected in accordance with this chapter as it existed prior to January 1, 2001, which was formerly compiled in title 22, ch. 5, which has been deleted.

Right to a Jury:

(A) Civil Cases

Written DEMAND must be made for a civil jury trial:

A party wishing to have one or more issues considered by a jury must file a written demand with the clerk. Tenn. R. Civ. P. 38. This can be done “in any pleading specified in Rule 7.01 or by endorsing the demand upon such pleading when it is filed, or by written demand filed with the clerk, with notice to all parties, within fifteen (15) days after the service of the last pleading raising an issue of fact.” Tenn. R. Civ. P. 38.02. The pleadings referenced in Rule 7.01 are the following: Complaint, Answer, Reply to Counterclaim, Answer to Cross-Claim, Third-Party Complaint, and Third-Party Answer.

Clerk TIP: Teach attorneys to conspicuously print, on first page of the document & near case/docket #, the following: “JURY DEMAND”. Read the document to be sure they have not omitted they want a jury.

Clerk should put case on “Jury Docket”, after jury is demanded:

When a party demands a jury “the action shall be designated upon the docket as a jury action.” Tenn. R. Civ. P. 39.01. Although the failure to make a timely demand initially appears to be fatal pursuant Tenn. R. Civ. P. to 38.05, Rule 39.02 clarifies that “notwithstanding the failure of a party to demand a

jury as to any issue with respect to which demand might have been made of right, the court in its discretion upon motion may order a trial by jury on any or all issues.”

Appeal to Circuit or Chancery Court – Jury may be demanded by any party

If a case is removed to a Chancery or Circuit Court by appeal or otherwise, “the clerk shall promptly give notice to the appellee of the filing of the papers.” Tenn. R. Civ. P. 38.03. This requirement is designed to give the appellee an adequate opportunity to make the jury demand, which must be made “within ten (10) days after the papers are filed with the clerk” unless the case is set for trial within 10 days, in which case “any party may make demand for jury trial when the case is called for trial.”

(B) Criminal Cases

“In all criminal prosecutions except for small offenses, the defendant is entitled to a jury trial unless waived.” “A waiver must be in writing; have the consent of the District Attorney General; and have the approval of the Court.” Tenn. R. Crim. P. 23

Jury Coordinator:

The clerk of the Circuit Court of the county shall be the **jury coordinator** unless the judge or judges who hold Circuit or Criminal Court in such county appoint someone other than the clerk to serve as the jury coordinator. T.C.A. § 22-2-201 (a)(1)

If the Circuit Court Clerk serving as jury coordinator becomes ill or is absent for any cause when the jury coordinator’s services are required, the clerk’s deputy may take the oath prescribed for the jury coordinator and thereafter perform the jury coordinator duties in the clerk’s absence. T.C.A. § 22-2-201(a)(3)

OATH for Jury Coordinator - See T.C.A. § 22-2-201(a)(2).

“I, _____, do solemnly swear or affirm that I will faithfully and impartially discharge the duties imposed upon me as jury coordinator for _____ County to the best of my knowledge and ability; that I will never place the name of any person on the jury list or in the jury box whom I know to be unqualified to serve as a juror, or who has to my knowledge solicited or had others to solicit that the person’s own name be placed on the jury list or in the jury box, so help me God.”

Jury Pool & Selection:

[The Clerk’s computer software may provide a jury program for selection and management.]*

***Clerk TIP: {See excerpt of the TnCIS User Manual (“Jury Management” summary page) used by the Dickson County Circuit Court Clerk’s Office, at page 13 of this *Guide*.} Jury selection may vary by county according to the Judge.**

It is the duty of the presiding Judge of the Judicial District to notify the jury coordinator of the number of names to be selected from the jury list, and these names shall constitute the **jury pool**. See T.C.A. § 22-2-304(a).

– **Automated Selection of Jury List** [from licensed driver records/lists, tax records or “other

available and reliable sources... by automated means” & NOT FROM VOTER LISTS]. “Jury coordinator is prohibited from using the permanent voter registration records as a source to compile the jury list.” See T.C.A. § 22-2-301(a).

Automated Selection of Names for Jury Pool – Selection of names for the jury pool shall be made by automated means “in such a manner as to assure proportionate distribution... that causes no prejudice to any person.” T.C.A. § 22-2-304(a)

When the required number of names have been selected for the jury pool, the jury coordinator shall place a list of those names in an envelope with a report signed by the jury coordinator. A copy of the list and report shall be retained by the jury coordinator. T.C.A. § 22-2-304(b)

- Alternate **non-automated jury selection** method. See T.C.A. § 22-2-302.
- Counties having **court in two places** – separate records required. See T.C.A. § 22-2-303.

Jury Pool Report: See T.C.A. § 22-2-201(a)(2).

To:

The Honorable _____, Presiding Judge of the _____ Judicial District, at
_____ County:

I, _____, the jury coordinator for such county, report that the enclosed names, which have been drawn according to law, constitute the jury pool for the upcoming jury service term:

This the _____ day of _____, 20____.

Jury Coordinator

Jury List Publication: See T.C.A. § 22-2-308.

“Immediately after the jury pool has been summoned in accordance with T.C.A. § 22-2-307, the jury coordinator shall create a list of the members of the jury pool, and a copy of the list of the members of the jury pool shall be posted in the clerk's office for public inspection. In addition, the jury coordinator shall cause to be made a sufficient number of copies of the list of the members of the jury pool, which shall be placed in the clerk's office and available for general distribution to the members of the bar and to all other interested persons.” T.C.A. 22-2-308

Juror Qualifications: See T.C.A. 22-1-101, 102, 104, 105.

18 years of age

U.S. citizen

Tennessee citizen

County resident (for 1 year)

No felony or perjury conviction

No personal interested or kinship

Proper state of mind that will not “...prevent the juror from acting impartially”. T.C.A. § 22-1-105

Jury Summons: “The administrative office of the courts shall prepare a form juror summons that may be used by the jury coordinator in any county.” T.C.A. 22-2-306(b)
[The Clerk’s court computer software may provide the jury summons form.]

The clerk prepares the Jury Summons, commanding the prospective juror’s appearance on a date and time certain. The Jury Summons may be mailed (via U.S. Postal Service) or personally served. See language below:

“The sheriff shall summon jurors by first class mail sent to the regular address of each member of the jury pool, giving notice of such person’s selection for jury duty. The summons shall be mailed to the regular address at least ten (10) days prior to the date fixed for such person’s appearance for jury service.” T.C.A. 22-2-307(a)

The jury coordinator may, at the coordinator’s discretion, summon the jurors by first class mail without the assistance of the sheriff. T.C.A. 22-2-307(d)

Juror Excuse/Exemptions: See T.C.A. § 22-1-103, 104, 105.

Excuse: See T.C.A. § 22-1-103.

“...A person is excused from jury service permanently only when the deciding Judge determines that the underlying grounds for being excused are of a permanent nature.” T.C.A. § 22-1-103(d)

Pursuant to T.C.A. § 22-1-103, any person may be **excused from serving** as a juror for:

1. mental or physical condition that causes that person to be incapable of performing jury service. {The court must be provided documentation from a physician licensed to practice medicine, verifying that a mental or physical condition renders the person unfit for jury service.}
2. undue or extreme physical or financial hardship to the prospective juror **or** a person under the prospective juror’s care or supervision. {The Judge shall make such determinations unless he/she delegates this authority to the **jury coordinator**. If not delegated to the jury coordinator, a Judge of the court may authorize the jury coordinator to make initial inquiries and recommendations concerning such requests.}

To support the request to be excused, the prospective juror shall provide the following documentation to the Court:* income tax returns, medical statements from licensed physicians, proof of dependency or guardianship, affidavit stating that the person is unable to obtain an appropriate substitute caregiver.

3. A jury 75 years of age or older may request to be excused.

*Documents shall be maintained by the jury coordinator during the jury service term, but may be destroyed thereafter. These documents are not public records and shall not be disclosed, except pursuant to a court order; however, the jury coordinator shall maintain a list of members of the jury pool who were excused pursuant to T.C.A. § 22-1-103 and that information shall be made available upon request.

Jury Orientation: Jurors are given basic instructions, i.e. call to a specific phone number (by or on a date certain) to learn of their next day's jury service.

Judges should welcome the opportunity to orient jurors as they commence their jury service, and some Judges provide a "Jury Handbook" for jurors to keep. During orientation, the Judge will often: (a) make a general statement of the importance of juror service; (b) summarize the jury selection process; (c) review the juror's oath and its purpose; (d) detail the steps of the trial, the purpose of attorneys' conferences outside the jury's presence, and the importance of following instructions; and (f) discuss the jury's verdict.

In **criminal cases**, the Judge is required to admonish the jury pursuant to Tenn. R. Crim. P. 24(g), as follows: **{Clerk TIP: Clerk may need to make Court Officers, who tend to the jury, aware of the following.}**

Admonitions. The court shall give the prospective jurors appropriate admonitions regarding their conduct during the selection process, as well as their conduct during the case. In both situations these shall include admonitions:

- not to communicate with other jurors or anyone else regarding any subject connected with the trial;
- not to form or express any opinion about the case until it is finally submitted to the jury;
- to report promptly to the court:
 - A. any incident involving an attempt by any person improperly to influence any jury member; or
 - B. a juror's violation of any of the court's admonitions;
- not to read, hear, or view any news reports concerning the case; and
- to decide the case solely on the evidence introduced in the trial.

Postponement of Jury Service: See T.C.A. § 22-2-315.

"... the judge shall notify the juror and the jury coordinator in writing designating an alternate date to which the juror's service is postponed." T.C.A. § 22-2-315(b)

Request for postponement of jury service -

shall be granted by the **jury coordinator**; provided, that:

- (1) The juror has not previously been granted a postponement;
- (2) The prospective juror appears in person or contacts the jury coordinator by telephone, electronic mail, facsimile, or in writing to request a postponement; and
- (3) A date certain is fixed for future jury service within twelve (12) months.

2nd Postponement of Jury Service -

“A subsequent request to postpone jury service may be approved by a Judge only on the basis of an extraordinary event, such as a death in the prospective juror's family, sudden grave illness or a natural disaster or national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial postponement was granted. Prior to the grant of a second postponement, the prospective juror must fix a date certain on which the juror will appear for jury service within twelve (12) months of the postponement and on which date the court will be in session.” T.C.A. § 22-2-315(c)

Juror remains under summons -

“A juror granted a postponement remains under summons to appear on the alternate date without the necessity of the issuance of a new summons; however, the jury coordinator may, at the coordinator's discretion, issue a new summons.” T.C.A. § 22-2-315(d)

Postponed Jurors List -

“The jury coordinator shall maintain a list of members of the jury pool whose service was postponed pursuant to this section, and that information shall be made available upon request.” T.C.A. § 22-2-315(e)

Juror Compensation:

Jurors are compensated pursuant to T.C.A. § 22-4-101 thru 105.

Every regular juror, including jurors on Chancery Court juries, is entitled to receive at least ten dollars (\$10.00) for each day's attendance and at least thirty dollars (\$30.00), if sequestered, for each day's attendance. T.C.A. § 22-4-101(a) & (e)

Upon the discharge of the jury, the jury coordinator shall “make out and certify a list of the jury, with the number of days they have respectively served, and the amount due to each, and deliver the same to the appropriate county official, who shall compensate jurors in the amount due to each of them in accordance with applicable financial procedures in the county.” T.C.A. § 22-4-104

Employed Juror - See T.C.A. § 22-4-106.

- **Excused work absence -**

Juror's employer shall excuse the employee for each day the employee's service as a juror exceeds three (3) hours.

- **Juror's paycheck -**

Employee is entitled the usual compensation; however, the employer has the discretion to deduct the amount of the fee or compensation the employee receives for serving as a juror.

[If an employer employs less than five (5) people on a regular basis or if the juror has been employed on a temporary basis for less than six (6) months, the employer is not required to compensate the juror during the period of jury service.] T.C.A. § 22-4-106(b)

- **Statement of Jury Service (for employer) -**

It is the duty of all persons paying jurors their fee or compensation for jury service to issue to each juror a statement showing the daily fee or compensation and the total amount of fees or compensation received by the juror. The person also shall provide a juror with a statement showing the number of hours the juror spent serving each day if the juror or juror's employer requests such a statement prior to the service at issue. T.C.A. § 22-4-106(c)

Donation of Jury Pay to Criminal Injuries Compensation Fund - T.C.A. § 22-4-107.

"Each prospective juror reporting for jury service shall be provided a form letter that, when signed by the prospective juror, directs the county treasurer to donate all of the prospective juror's reimbursement for jury service to the criminal injuries compensation fund ."

[The statute does not specify who performs this task, but it appears to be the responsibility of the court clerk.]

Juror Examination & Seating Jury: Judge or Clerk will draw names of jurors, and the clerk (or judge) calls names to fill the jury box plus alternate(s).

Criminal and Civil Cases -

Parties or their attorneys have the right to examine prospective jurors. T.C.A. § 22-3-101. The parties may also challenge a juror for cause for any of the reasons delineated in T.C.A. § 22-3-102, 103,104. See *also* Tenn. R. Civ. P. 47; Tenn. R. Crim. P. 24.

Clerk TIP: Clerk should consult with the Judge to ascertain specifics of the preferred selection process. {See "Jury Selection Process" of the Chancery Court of the 3rd Judicial District, at page 14 of this *Guide*.}

Civil Cases Only -

As a general rule, each party in a civil case is entitled to 4 peremptory challenges (without assigning any cause). If there are more than two parties, the court shall increase and distribute the number of peremptory challenges in the manner designated by T.C.A. § 22-3-104. Tenn. R. Civ. P. 48 governs the manner in which the parties examine potential jurors, select alternate jurors (when appropriate), and exercise their peremptory challenges. Although a jury typically consists of 12 persons (not including

the alternates), parties may stipulate to “any number less than” 12. Tenn. R. Civ. P. 47. The parties also may stipulate that “a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.” *Id.*

Criminal Cases Only -

The procedure for selecting a jury in a criminal case is set out in Tennessee Rule of Criminal Procedure. The number of peremptory challenges depends upon the potential penalty, number of alternate jurors, and number of defendants. Tenn. R. Crim. P. 24. However, the general rule is that each defendant is entitled to 15 peremptory challenges if the offense is punishable by death, eight challenges if the offense is punishable by imprisonment for more than one year, and three challenges if the offense is punishable by imprisonment for less than one year, by a fine, or by both. The defendant is granted an additional challenge for each alternate juror. The state is granted the same number *for each defendant*. *Id.*

Trial Procedures – Criminal & Civil Cases

(A) OATHS:

Qualifying Jurors for the day:

Do you and each of you solemnly swear or affirm that you **will true answers make to such** questions that may be asked you, so help you God?

Are you in any way related to the parties in this case?

Have you formed or expressed an opinion as to the merits of this case?

Swearing Jurors to Try the Issues (try case):

Will you and each of you solemnly swear or affirm that you will well and truly try the issue joined in this case on trial and a true verdict render, according to the law and evidence, so help you God?

Oath for Court Officers in Charge of Jury:

Do you solemnly swear that you will wait on this Jury as the law directs. You will not communicate with them, let anyone else communicate with them, other than to inquire as to their welfare and comfort until they return with a verdict in open Court, so help you God?

Swearing Witness or Defendant:

Do you solemnly swear or affirm that the testimony you shall give, will be the truth, the whole truth and nothing but the truth, so help you God?

(B) NOTE TAKING / JUROR QUESTIONS

Clerk Destroys Notes -

Jurors shall be permitted to take notes with materials provided by the court, and court personnel shall promptly destroy the notes after the jury has rendered a verdict. Tenn. R. Civ. P. 43A.01; Tenn. R. Crim. P. 24.1. Likewise, if the court provides jurors with notebooks, court personnel must destroy the contents unless otherwise instructed by the court. Tenn. R. Civ. P. 43A.02; Tenn. R. Crim. P. 24.1

Clerk Maintains Jury Question in the Record -

If a juror submits a question for a witness, the court shall consult with the parties before deciding how to proceed. Regardless of whether the court chooses to allow the witness to answer the question, or an amended version thereof, the question “shall be retained for the record.” Tenn. R. Civ. P. 43A.03; Tenn. R. Crim. P. 24.1

(C) FORMS: {See certain “example” forms that follow.}

- **Jury Selection Chart** - Used by the Court to seat jurors, & should be provided by the Clerk. {See form at page 15.}
- **Peremptory Challenges Submission Slip Form (for Civil & Criminal cases)** – Used by the attorneys & should be provided by the Clerk. {See forms at page 16-17.}
- **Verdict Form** -
The form of the verdict (special verdict, general verdict accompanied by answers to interrogatories) in a civil case is within the discretion of the court. Tenn. R. Civ. P. Parties in a civil case, may agree to allow a jury to reach a non-unanimous verdict. In a criminal case, the verdict must be unanimous. Tenn. R. Crim. P. 31. {See form at page 18.}

Grand Juries:

NOTICE: See 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 forty (40) days before the grand jury meets, the **following notice in a newspaper** of general circulation in the 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 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 the foreman's address]

“The grand jury will next meet on _____, the _____ day of _____, 20____, 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 the 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. T.C.A. § 40-12-105(c)

INVESTIGATIVE GRAND JURY - See T.C.A. § 40-12-204.

(a) 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 on the petition, and shall record the filing of the petition in records kept for proceedings under this part.

(b) The **clerk shall** then immediately forward the petition to the presiding Judge of the judicial district.

Version 5.0

Revision Date: 3/3/23

TnCIS User Manual



CHAPTER 21

JURY MANAGEMENT

1-54

IMPORT JURORS	1-4
JUROR MASTER	5-9
GROUP/JURY MANAGEMENT TASKS/OPTIONS	10-17
PANEL	18-20
JURY	21-26
CALCULATE JUROR PAY	27-32
JUROR PAY HISTORY	33-35
ADD JURY MANAGEMENT DOCUMENTS	36-39
JURY DOCUMENTS	40-41
PRINT BLANK JURY DOCUMENTS	42
EXPORT JURORS	43-44

IN THE CHANCERY COURT OF THE THIRD JUDICIAL DISTRICT

“JURY SELECTION PROCESS”

1. After swearing the venire, the clerk will call 12 jurors to the jury box. These individuals will be designated as panel A.
2. The clerk then will call an additional 12 (or as close thereto as possible) jurors who will be seated in front of the jury box. This will be panel B.
3. The plaintiff will conduct his/her voir dire; *the questions will be directed to, and answered by, both panel A and panel B.*
4. After plaintiff concludes his/her voir dire, defendant will conduct voir dire, again directed to both panels A and B.
5. At the conclusion of defendant's voir dire, plaintiff may conduct a brief supplemental voir dire. If plaintiff elects to conduct such a supplemental voir dire, defendant will be allowed to conduct a supplemental voir dire.
6. There will be no other voir dire.
7. *Challenges For Cause may be made orally during the conduct of the voir dire examination and shall be directed to both panels.*
8. *All preemptory challenges shall be directed to panel A as described hereafter.* Preemptory challenges shall be in writing and submitted directly to the Chancellor simultaneously by both parties. The written challenges will be filed as Exhibits.
9. Jurors excused from panel A will be replaced by jurors from panel B in the order in which panel B jurors are sitting.
10. After the replacement jurors are seated within panel A, the parties will submit any additional challenges to the court and steps 7 and 8 will be repeated and thus it will be until both sides have exhausted their allotted number of challenges and the court has ruled upon all challenges for Cause.
11. If a potential juror is peremptorily challenged by both parties, each party shall be charged with that challenge.
12. Additional jurors shall be selected according to T.R.C.P. 47.02(1).
13. Regarding jury panel designation, the Clerk may refer to the jury panels as “A, B, C...” (as above) or “1, 2, 3...”, as well as some other designation.

JURY SELECTION CHART

RE: CIVIL CASE – Peremptory Challenges Submission Slip

["Either party to a civil action may challenge four (4) jurors without assigning any cause." T. C. A. § 22-3-104 (a)]

Peremptory Challenge Submission Slip

Name of Party- Plaintiff or Defendant:

Attorney: _____

PEREMPTORY CHALLENGES
SUBMISSION NO. _____

JURORS EXCUSED (please print legibly):

Signature of Attorney

RE: CRIMINAL CASE – Petit Juror Peremptory Challenges Submission Slip

[After the court conducts its initial examination and seats a tentative group of jurors not excluded for cause, a procedure set out in Tenn. R. Crim. P., Rule 24(d), shall be followed until a full jury has been

selected from those jurors and accepted by counsel. RE: Number of Peremptory Challenges – 3 if prison @ less than 1 year; 8 if prison @ more than 1 yr. & 15 if death. See Tenn. R. Crim. P., Rule 24 (e)]

Petit Juror Peremptory Challenge Slip

1. CASE # _____
2. Attorney: _____
3. Representing:
() State () Defendant: _____
4. Submission # _____
5. Alternate Selection ()
6. Jurors Challenged:
 - (1) _____ Seat # _____
 - (2) _____ Seat # _____
 - (3) _____ Seat # _____
 - (4) _____ Seat # _____
 - (5) _____ Seat # _____
 - (6) _____ Seat # _____
 - (7) _____ Seat # _____
 - (8) _____ Seat # _____
7. Signature of Attorney: _____

Date: _____, 20_____

Verdict Form may be supplied by the Judge's Office and not the Clerk.

EXAMPLE

CIVL ("personal injury lawsuit") VERDICT FORM

#1. Do you find that the Plaintiff, _____, has proven by a PREPONDERANCE OF THE EVIDENCE that the Defendant, _____, is at fault for injuries sustained by him on _____

_____, 2016?

If you answered “NO” to Question #1, have the jury foreman sign this form below and inform the bailiff you have reached a verdict.

If you answered “YES” to Question #1, please answer Question #s 2 and 3.

#2. Do you find that the Plaintiff, _____, was also at fault for injuries sustained by him on _____, 2016?

YES _____

NO _____

If you answered “YES” to Question 2, please indicate below the fault you attributed to each party:

Plaintiff, _____

Defendant, _____

#3. Please enter the amount of damages you find that the Plaintiff, _____, is entitled to without taking into account any degree of fault you may have attributed to the Plaintiff:

\$ _____

JURY FOREMAN’S signature

Tennessee Pattern Jury Instructions - Civil

Database updated September 2015

Chapter 1. General Instructions

T.P.I.—CIVIL 1.01 Before Voir Dire

You have been summoned as prospective jurors in a civil case involving *[an automobile collision that occurred on or about _____ at _____]**[a claim of medical negligence]**[a claim involving _____]**[an incident that occurred on _____]*. The parties involved are: . Their attorneys are: . _____

[Two separate cases are being tried together. In one case, the plaintiff(s), _____, has/have filed a lawsuit against defendant(s). In the other case, plaintiff(s), _____, has/have filed a lawsuit against the defendant(s), _____ .

Since these cases are being tried together, whenever I refer to “plaintiff” or “defendant,” I am referring to each party who is a plaintiff or a defendant in one of these cases.]

You will be asked questions *[by the Court and]* by the attorneys. Although some of the questions may seem to be personal, they are intended to find out if you have any knowledge of this particular case, if you have any opinion that you cannot put aside or if you have had any experience in life that might cause you to identify yourself with one party or another. Jurors must be as free as humanly possible from bias, prejudice, or sympathy and must not be influenced by preconceived ideas about the facts or the law. The parties are entitled to jurors who approach this case with open minds until a verdict is reached.

Each party has a right to request that a certain number of prospective jurors be excused. If you are excused you should not consider it a reflection on you in any way.

USE NOTE

Much of the foregoing may be supplied by orientation material, if available, prior to the time the case is called for trial.

The oath to be administered to the prospective jurors prior to voir dire may be as follows:

Do you solemnly swear or affirm that in this case now for trial you will well and truly answer such questions as may be asked you as to your competency as jurors, so help you God?

COMMENT

For qualifications and exemptions of jurors, see T.C.A. Title 22, Ch. 1; selection and attendance, T.C.A. Title 22, Ch. 2; examination and challenge of jurors, T.C.A. Title 22, Ch. 3; compensation of jurors, T.C.A. Title 22, Ch. 4.

The ultimate goal of *voir dire* is to determine whether the jurors are competent, unbiased and impartial. The scope and extent of the *voir dire* rests within the discretion of the trial judge. Even if the court errs by excluding a juror for cause, the error is harmless unless the sitting juror is not fair and impartial. A party is entitled to a jury composed of persons free from bias or prejudice but the right to challenge is a right to reject, not a right to select. Parties have no right to any particular juror. The judge has the duty to discharge any juror who cannot be an unbiased juror. The jurors must be free from even a reasonable suspicion of bias or prejudice.

[*Danmole v. Wright*, 933 S.W.2d 484 \(Tenn. App. 1996\).](#)

An individual examined during voir dire is not required to have a complete lack of knowledge of the facts and issues to be selected as a juror. See *State v. Pike*, 978 S.W.2d 904, 924 (Tenn. 1998) (appendix). As the United States Supreme Court has said it is “sufficient if the juror can lay aside his impression or opinion and render a verdict on the evidence presented in court.” *Irvin v. Dowd*, 366 U.S. 717, 723, 815 S.Ct. 1639, 6 L.Ed. 751 (1961); see also *Mann*, 959 S.W.2d at 531 (recognizing that jurors may be selected to hear a trial if they are able to set aside an opinion and render a verdict based on the evidence in court. *State v. Davidson*, 121 S.W.3d 600, 612–13 (Tenn. 2003).

Juvenile

- Part 1
 - Protocol for Front Office Clerk
 - Protocol for Courtroom Clerks
- Part 2
 - Child Support Procedures
 - Assisting Clients with Filing Motions
- Clerk & Attorney Drawn Orders
- Processing Pro Se Petition Reissues from the Courtroom
- Procedural Management of Cases Set for Hearing
- Order Checklist
- New Attachment/Mittimus Submission Process

JUVENILE GUIDE
COMPILED BY:
HAMILTON COUNTY JUVENILE COURT

Part 1 – Main Division (Delinquent, Custody & Unruly)

Part 2 – Child Support Division

Part 1

MAIN DIVISION PROCEDURES

PROTOCOL FOR FRONT OFFICE CLERKS

PETITIONS

- We accept petitions over the counter from The Intake Department, Probation Department, Informal Department, Intake and Family Services Department, The Department of Children's Services and Private Attorneys.

PROCEDURES OF THE PETITION

- File stamp the petition; notarize if necessary; assign the petition a number in our JFACTS System (Juvenile Family and Child Tracking System), if it is filed by the Department of Children's Services or by a private attorney. All other petitions are assigned petition numbers by the court staff.
- Prepare a cost sheet for the fee of filing the petition (s) by private attorneys; Intake and Family Services Department; and Informal Department and forward to the cashier for processing.
- Make copies of the new petitions filed by Department of Children's Services and private attorneys to submit to them.
- The Department of Children's Services will usually submit an Order for Temporary Custody with a new petition. The case worker from the Intake and Family Services Department will take the petition and Order to the Judge/Magistrate to sign and obtain a court date.
- Once the petition is returned, the information is entered into JFACTS. The petition and any other documents submitted are scanned into our imaging application and placed in the file. Each child has a file created when a petition has been filed. All subsequent filings are placed in the existing files.

CORRESPONDENCE

- Correspondence is accepted over the counter and by mail. The documents are stamp-filed, scanned to the file and processed to be sent to the Hamilton County Annex Building Warehouse. We accept Correspondence from private individuals, attorneys, court staff, the Department of Children's Services and other agencies.

IN-COMING TELEPHONE CALLS

- A phone tree directs callers to the appropriate destination. Most callers are inquiring about court dates, attorney's information or the process for obtaining court orders.

CLERK & ATTORNEY DRAWN ORDERS

- Clerks enter all orders of the court after the orders are signed. Clerks "lodge" all attorney drawn orders upon receipt and forward to the Judge/Magistrate for signature. Once orders are signed and returned to the clerk, the order will be stamp filed and entered. All orders are scanned into the JFACTS imaging application. A rule docket

entry is completed on each entered order including any activity by the clerk and the date the order is sent to the parties.

CASHIER

- Receipts all monies paid for filing fees, court costs, fines and restitution. Receipts in monies ordered to pay to the court to be held for attorney services. Maintains accounting program for all monies receipted in. Disburses restitution, cash bonds and any monies ordered by the court to disburse. Disburses all administrative fees and truancy monies.

PURGING FILES

- When a child has reached the age of 18, unless under supervision of the court, the file is purged, boxed, indexed, and sent to the Hamilton County Annex Building Warehouse. .

ISSUING SERVICE

- Clerks issue all service required.
- Service for personal service is forwarded to the Courts Process Department. Once service has been executed and service have been returned, a rule docket entry is completed. Service papers are scanned to the file and processed to be sent to the Hamilton County Annex Building Warehouse.

ATTORNEY APPOINTMENTS

- Upon a request to appoint counsel for a parent or child, we send out a mass email to our attorney appointment list for an attorney to accept the case. An Order for appointment is prepared and copies of discovery are made for the attorney accepting the appointment. The Appointment Order is scanned to the file and entered in JFACTS attorney appointment screen and then placed in the file. All attorneys are appointed on a rotating basis unless otherwise ordered by the court.

REHEARINGS/APPEALS

- When a party files a Rehearing or Appeal at the Counter, we file stamp the documents and make copies for the parties. The rehearing request is sent to the Judge for approval and a court date is set if approved. Appeals are prepared according to procedures and sent to Circuit/Criminal Court or the Court of Appeals.

MOTIONS

- We file stamp the motion(s); set the case; submit a copy of the motion to the party filing the motion. The motion hearing is entered into JFACTS hearing screen, scanned to the file. A copy is delivered to the Court staff and a rule docket entry is completed. Motions filed by the close of business on Tuesday will be set the following Wednesday accordingly unless otherwise requested.

FOSTER CARE

- Foster Care meets twice a month. A list is submitted to us by the Department of Children's Services Liaison. We enter each case (s) in JFACTS Foster Care section of JFACTS for the panels to view the file digitally in the image

viewer. Once the reports are submitted to the Clerk's office, we file stamp each document, scan documents to the file, make copies for the Department of Children's Services and all parties, then mail or email copies to the parties.

SEAL/EXPUNGE

- Upon receiving an Order to seal a file from the Judge/Magistrate, the JFACTS electronic file is sealed. Once the file is sealed it cannot be viewed without permission of the court. The paper files are sealed in an envelope and sent to the Hamilton County Annex Building warehouse.
- When the Judge/Magistrate orders the clerk's office to expunge a record, the JFACTS electronic file is expunged/deleted/redacted from the system. All corresponding documents associated with the expunged docket number are removed from the paper file and destroyed. Redaction of documents occurs when there is a partial expungement.

ATTORNEY VIEWING STATIONS

- There are three viewing stations available for attorneys to view the electronic case file in our JFACTS system. The attorney informs us of the child's name and we confirm they are the attorney of record; we upload the file to the viewing station and enter the parties name viewing the case. After the party finishes viewing the images, the viewing station is cleared. If copies of documents are requested, we print the documents and charge accordingly.

TRUSTS

- Upon receiving a petition to establish a trust, we contact the petitioner to obtain all necessary documents to process the petition. Once we receive the documents, a petition number is assigned. A trust fund account is opened once we receive the trust monies. The trust account is closed out once the child reaches 18 years of age and funds are given to the party. Procedures governing trusts are found in TCA 29-13-301, et. al.

AFFIDAVIT OF INDIGENCY

- If a party states he/she cannot afford the filing fee and requests to file a pauper's oath, the Clerk will assist a party in completing the affidavit. All affidavits are submitted to the Judge/Magistrate for approval or denial. Once the affidavit is returned, it is scanned to the file. If the affidavit is submitted at the time of filing the affidavit is submitted on the Court date and addressed by the Judge/Magistrate.

DOCKETS

- Cases are scheduled by the Judge and Magistrates, court staff and deputy clerks assigned to processing motions. All court proceeding schedules are maintained in the JFACTS hearing screen. Daily dockets are printed by the administrative staff for the Judge and Magistrates. The clerk's office provides a copy to the Tennessee Department of Children's Services.

PROTOCOLS FOR COURTROOM CLERKS

PREPARING FOR COURT:

- Print out docket sheets
- Pre-type order (including posture of the case)
- Begin notebook page for each child to take notes on the decision
- Using documents tab look at/read the last one or two orders
- Check docket numbers from docket sheet to last order
- Check program screen for outstanding costs (make note)
- Look at disposition sheet to check with order.
- Check file alerts and clerk alert (make note)
- Receive any documents from docket clerk for judicial notice

DUTIES IN COURT

- Receive any documents for judicial notice and/or filing
- Open the digital recording system
- Type in case name and docket number in recorder
- Begin recorder
- Check off present in Court in notebook as announced
- Listen to case and take notes. Other duties to be performed during the course of the hearing may include but are not limited to the following:
 - Swear in parties
 - Send and answer emails regarding cases on docket, etc.
 - Add any new attorneys to assignment screen
 - Mark exhibits and fill out exhibit form (number exhibit pages)
 - Print out and enter orders
 - Answer questions/look in JFACTS for attorney/District Attorney questions
 - Complete Multiple Disposition screen/rule docket entry
 - Complete Petition Action screen/rule docket entry
 - Complete Disposition Sheet
 - Complete Assignment screen if applicable
 - Begin typing order if possible
 - Enter orders and make certified copies for parties
- Type and print out any cost sheet
- Note judicial decision
- Fill out any Court referrals or detention referrals (incl. Department of Children's Services)
- Fill out any necessary paperwork (Driver's license revocation, custody order, public service hours, SHOCAP, attachment, mittimus, mediation, home study, sex offender registry, committal form, attachment cancellation, mittimus cancellation, order of protection, adult public service hours, jail release, etc.)
- Turn the digital recording system off
- After Court, review docket with court worker

DUTIES AFTER COURT

- Prepare all documents for scanning by file number
- Scan documents to file
- Enter any signed orders, distribute copies
- Copy petitions for home study, give to Department of Children's Services with copy of order
- Copy committal for various parties
- Type orders
- Print out any order needing immediate judicial notice
- Send time sensitive orders to administration in red folder
- Send email for any testimony by children to be sealed
- Call various courts or send letter (as directed) to request other court's documents, etc.
- Email docket to supervisor for review
- Make any necessary revisions when returned from supervisor
- Copy entire docket to Judge/Magistrate's folder
- Check each disposition for completion and assignment screen changes
- Check JFACTS information screen if necessary
- Scan and send all attachments, mittimus, arrest warrants, nay cancellations to the appropriate agencies
- Type open/close

AFTER JUDGE/MAGISTRATE REVIEWS DOCKET

- Make any necessary revisions
- Print docket on minute paper
- Merge orders with signed orders from same date
- Send docket to Judge/Magistrate in folder for signature

AFTER SIGNATURE OF CLERK'S ORDERS FROM THE JUDGE/MAGISTRATE

- After the minute clerk enters and scans orders, receive email for scanned orders
- Take docket sheet to minute clerk
- Print orders to be sent out at the direction of the judge/magistrate
- Type envelopes for mail-outs
- Send orders to appropriate parties, note in rule docket
- Send transfers to appropriate jurisdictions

Part 2

CHILD SUPPORT PROCEDURES

ASSISTING CLIENTS WITH FILING OF PETITIONS

In an effort to provide consistency and adherence to the law every time we assist clients at the counter, the following guidelines are to be followed when an individual wishes to file a pleading:

1. The Clerk's Office will not attempt to determine who should be offered the Application to Commence Legal Action with Oath of Poverty and Affidavit of Indigency. This could result in a discrepancy as to who is offered the Affidavit and who is not, depending on what information the client gives and which clerk is assisting the individual. If, once an individual has been notified of the filing fee for his/her cause of action, the individual states that he/she cannot afford the filing fee, the clerk should:
 - a. Remind the client that Veritas Child Support Services is contractually obligated to assist **any custodian or non-custodial parent** in their child support needs, regardless of income, and even if he/she is the payor parent.
 - b. If the individual does not wish to utilize Veritas services, or does not meet their criteria for assistance, the clerk should remind the party that they always have the right to retain private legal counsel to assist them in filing the appropriate pleading.
 - c. If the party asks to file by "Pauper's Oath," "Affidavit of Indigency," or even "the form so I can do it for free," the Application to Commence Legal Action with Oath of Poverty should be provided to him/her. The form should not be offered to a person that does not ask for it in some way. **We do not put ourselves in a position of deciding who is, in our minds, worthy of the right to file without payment of the fee.**
 - d. Even if the clerk's office filing fee is waived, if the individual filing the petition wishes for the Hamilton County Sheriff's Office to provide service of the summons to the opposing party, the cost will be \$42.00 per party to be served. The person filing the petition will be required to tender a money order made payable to the Sheriff's office in the appropriate amount at the time the petition is filed. This fee cannot be waived by the use of Pauper's Oath.
2. If the party has asked to file by Pauper's Oath and he/she has been provided with the Application, the clerk should instruct him/her:
 - a. Once the Application is submitted, the magistrate will review the form and make a decision as to whether the party is allowed to file a petition without the payment of the filing fee at the time of filing.
 - b. The party must fill out the form completely, leaving nothing blank. An "N/A" or a zero, or even a strikethrough line should be placed in categories that do not have another answer.
 - c. The clerk may need to help the party determine the division in which the individual's case(s) are normally heard.
 - d. The applicant's address must be complete, including city, state, and zip code. A letter will be mailed to this address to notify the party as to the decision of the magistrate, so the address provided on the form needs to be the location to which the party receives his/her mail.
 - e. If the Application is approved, the party may return to the clerk's office to file the petition. The Application will be held on file in the clerk's office for 60 days. If the party has not

filed a petition within 60 days, he/she will be required to complete a new Application and go through the process again.

3. The clerk will take the completed Application, file stamp it on the front at the top right corner, and at the end of each day, present the completed applications to the Director. The Director will then present the applications to the appropriate magistrate on Friday morning.
4. Once the application is returned by the magistrate to the Director:
 - a. If the Application is approved, a letter of approval will be sent to the party. The application and a copy of the approval letter will be scanned into the corresponding file(s).
 - b. If the Application is denied, a letter of denial will be sent to the party. The Application and a copy of the denial letter will be scanned into the party's file(s).
5. If the Application has been approved and the party has returned to file a petition:
 - a. The clerk shall check the file to review the party's application to ensure that approval was granted. If the Application is file stamped within 60 days, the party will be able to file the petition. Applications that are over 60 days old should be resubmitted and reviewed.
 - b. If the party asks for a form petition or summons for their needs, the clerk's office can provide that form to him/her.
 - c. If the party needs assistance with filing out the form, the clerk's office can provide information regarding his/her case, including docket number, TCSES number, division, monthly amount of child support payments, and the arrears judgment according to TCSES. The clerk's office will not provide any legal advice as to what proof to prepare, what documents or witnesses to bring to court, or anything other than factual information relating to the party's case(s).
 - d. Pursuant to T.C.A. §20-12-127, the Pauper's Oath does not relieve the filing party from paying the costs/fees, but suspends their collection until taxed by the Court. Therefore, the party filing the petition via Pauper's Oath will be advised to be prepared to pay the filing fee on the day of court, in the event the Court taxes the costs on that date.
 - e. The petition will then be processed as usual and set for an appropriate court date. The summons will be issued to the Sheriff's office, if the individual pays the \$42.00 fee per party for service of process.

ASSISTING CLIENTS WITH FILING MOTIONS

1. Parties will no longer be allowed to file issues of contempt or modification by use of motion. These causes of action require a summons to be issued to the opposing party, and incur the proper filing fee as stated in T.C.A. §8-21-401.
2. Examples of issues that could be filed by motion include, but are not limited to: Motion to reschedule hearing, motion to compel, motion for DNA testing, motion to reconsider, motion for purge reduction/suspended sentence, etc.
3. Parties to a case may file a motion when the case is already properly before the court, and if a final judgment has not been entered, there is technically no cost to file a motion, according to the Tennessee Code. However, the party filing the motion will be charged \$.50 per page to produce copies of the motion. If the party brings their own motion with the requisite number of copies, there will be no charge. **Note: Motions will incur a \$27.00 per case fee if a final order has been entered in the matter (see below).**
 - a. The movant (party filing the motion) will be charged **\$1.50** for each motion that is made, which represents three photocopies: one for the movant to keep for his/her records, one to be placed in the Veritas mailbox, and one to be given back to the movant so that he/she may provide certificate of service to the non-moving party. The original will be kept in the file.
 - b. In cases of family violence, the clerk's office will mail the copy of the motion to the non-moving party, for a charge of \$.50, which represents the costs of postage/mailing of the motion, therefore making the total charge **\$2.00**.
4. Motions that are made after a final judgment has been entered by the court will incur a \$27.00 fee, authorized by T.C.A §8-21-401(e)(4) and (i)(1) as Post-Judgment Requests. These include motions for purge reduction/suspended sentence, motion to reconsider (if no further hearings are scheduled), and any other motion or special request that is made after the court has made a final ruling in the case with no further review. The movant will be charged the appropriate fee plus \$.50 for any copies that are required, either for the movant, non-moving party, or Veritas.
 - a. If the movant is a Respondent who is filing a motion for purge reduction/suspended sentence ("jail motion"), the clerk's office will mail a copy of the motion and notice of hearing to the opposing party and provide a copy to Maximus, as a courtesy to the movant, once the matter has been set on the docket.
 - b. If the movant states that he/she cannot afford the \$27.00 per case filing fee and asks to file a Pauper's Oath, the Oath and application will be submitted to the Magistrate for their review before the matter is set on the docket. If the movant is denied the right to file by Pauper's Oath, a letter will be sent to the movant stating that he/she must pay the \$27.00 per case filing fee to have the motion set on the docket. This includes jail motions.
5. Moving parties are required by Tennessee Rules of Civil Procedure (T.R.C.P.) Rule 5.01 to provide a copy of all pleadings subsequent to the original petition to the opposing party or attorney, including written motions. T.R.C.P. Rule 5.02 details the methods in which delivery of a copy of a pleading is valid. Service by mail is complete upon mailing.
 - a. The Clerk's Office will no longer provide service to the non-moving party, via certified mail or otherwise, except in cases of family violence. The party filing a motion should be instructed that he/she is required by law to provide a copy of the motion to the opposing party. The new motion form has a certificate of service that the movant must read and sign, and the clerk should call the person's attention to that information. If the Court determines that the non-moving party did not get adequate service of the motion, the

motion could be denied.

6. All motions (except for jail motions), whether filed by an attorney or a pro se litigant, will be set on the docket in the same manner. All motions filed by 4:30 pm on Monday will be set for hearing on Tuesday of the following week at 8:30 am.
7. Jail motions will be set on a magistrate's docket according to availability, on Thursday mornings.

Steps for Processing Agreed Orders / Orders of Dismissal / Amended Orders

CLERK & ATTORNEY DRAWN ORDERS

- Clerks enter all orders of the court after the orders are signed. Clerks “lodge” all attorney drawn orders upon receipt and forward to the Judge/Magistrate for signature. Once orders are signed and returned to the clerk, the order will be stamp filed and entered. All orders are scanned into the JFACTS imaging application. A rule docket entry is completed on each entered order including any activity by the clerk and the date the order is sent to the parties.
- Check to see if there is an upcoming court date listed in JFACTS
- If the order is an Order of Dismissal:
 - If the court date is within three weeks, update the hearing record by adding “Order of Dismissal” in the notes section. Place a sticky note on the document to alert the courtroom clerk to the date/time of the hearing and send to clerk.
 - If the court date is more than three weeks away, add a new hearing to a date closer in time, but one that will not require an add-on to be completed. In the notes section, add “Order of Dismissal.” Update the original hearing date as “cancelled” in JFACTS. Then send the order to the courtroom clerk with sticky note.
- If the order is an Agreed Order:
 - If the court date is to be cancelled and the court date is within three weeks, update the hearing record by adding, “Agreed Order submitted, hearing cancelled.” Send the order to the courtroom clerk with a sticky note.
 - If the court date is to be cancelled and the court date is more than three weeks away, add a new hearing record to a date closer in time, but one that will not require an add-on to be completed. Add in the notes section, “Agreed Order.” Because the hearing record is being updated, the future court date will be updated as “cancelled” at that time. Send the order to the courtroom clerk with a sticky note.
 - If the court date is to remain in place, and the court date is within three weeks, update the hearing record by adding, “Agreed Order submitted, court date to remain.” Send the order to courtroom clerk with sticky note. The clerk and magistrate will know that the parties are expected to appear.
 - If the court date is to remain in place, but the court date is more than three weeks away, ADD a hearing record to set the Agreed Order to be reviewed and signed by the magistrate. In the notes section, add “Agreed Order submitted, court date of xx/xx/2015 to remain.” Send the order to the courtroom clerk with a sticky note. **If the agreed order is signed, the courtroom clerk will be responsible for updating the matter type on the upcoming hearing to eliminate any issues that have already been addressed by the agreed order, and leave the remaining issues in place.*
- If the order is an Amended Order:
 - The order will be added to the next available docket week that would not result in an add-on, unless a previously scheduled hearing will occur before that time.

PROCESSING PRO SE PETITION REISSUES FROM THE COURTROOM

- The filing party may or may not have had their filing fees waived. This does NOT waive the county sheriff's service of process fee.
- If the party wants the sheriff to serve the petition, the current cost is \$42.00 per petition, effective July 1, 2016.
- If the sheriff was unable to serve the non-filing party prior to the original hearing, the filing party may wish to have the petition reissued. This will require an additional money order for the service attempt.
- The filing party can choose to have a third-party service packet issued to him/her. It is then his/her responsibility to find someone qualified to serve the opposing party and then execute and return the original summons prior to the court date. This will be done at no additional cost to the filing party.
- The magistrates have been asked to explain this process to the filing party, on the record, and ask the filing party if he/she wants the petition reissued. If so, the summons/petition pack will not be sent to the sheriff until the money order for service is received by this office.
- Service of process for an individual who lives outside of Tennessee is accomplished through the TN Secretary of State. The cost for this service is \$20.00, and requires a money order payable to the Secretary of State. Payment must be submitted along with the service request.
- Once the filing party submits an additional money order for service on a reissue packet, the packet is sent directly to the county sheriff or secretary of state, and is not sent along to Veritas. Therefore, do not place any pro se reissues into the boxes for the State to pick up.
- If you are sending it to the Hamilton County Sheriff, you can send it in an interoffice envelope and direct it to "Sheriff's Office, Civil Process."
- If it is to be sent to any other county sheriff or the Secretary of State, you will have to send the documents via U.S. Mail.

PROTOCOLS FOR COURTROOM CLERKS -- PROCEDURAL MANAGEMENT OF CASES SET FOR HEARING

Process for Preparing for the Court Week

1. Print off all docket sheets for the following week on Tuesday.
2. Scan through each docket to determine if any person is currently incarcerated and send the information to the appropriate clerks.

Process for Prepping an Individual Docket

1. Scan the docket sheet you have printed out from last Tuesday to see if any add-ons/removals have occurred. Re-print your docket sheet if necessary.
2. Go through your service returns-mark those that have service on your sheet.
3. Open Browse screen- this is where you will verify that there is only one entry for each of your parties.
4. After step #3, you can enter your docket number in the Master Main screen or click on most recent filing date and you should see the current case that is on your docket.
5. Review JFACTS information for each party on Master Main screen, filling in any blank spaces. You may need to go to the service returns, civil cover sheet, last order, or the hearing if no information is found.
6. Check for any related cases for any upcoming hearings with these parties; notate these on printed docket sheet.
7. You should be reviewing rule docket entries, clerk's notes and magistrate's note for more information or clarification. (To verify that there is no missing rule docket entries or clerk's notes: order sent to vital records, scanned to fugitive, issued out summons, subpoena etc. (You will also need to be checking for any parties that may be incarcerated-you will continue to forwards those to the appropriate clerks.
8. Double click on the hearing for which you are prepping. Review the matter type in the top right corner to make sure that is correct. For example, if in the previous hearing the court found the respondent in contempt and continued the case for compliance, the hearing matter should say "compliance" and not "contempt." If the previous hearing was establishing parentage and the court declared him the father and set support but reserved on the name or prior support then the hearing matter should be prior support and name not establish parentage.
9. You will then need to click on the images in the Child Support Indexes (newest documents) and then review the Back scanning Indexes (older documents). To properly prepare for court, clerks should review at least the last two years of litigation, scanning each document for imaging errors. Clerks should check to make sure that newly scanned documents are named correctly, have the correct date, and are complete. Back scanned documents should be scanned for blank pages and correctness, through two years of litigation. At this time, you may go into the imaging application to add/edit information about important documents using the Document Tag feature. For example, you could notate pleadings signed by Mag. Jones (e.g., "Order signed by MAJ"); the last order with support worksheet ("Order & worksheet"); or any other document that you feel should stand out for the magistrate's attention during court.

10. Any outstanding attachments that are found during file review shall be entered into the Attachments Tab prior to the court hearing, or as soon as possible thereafter. Clerks should go back at least as far as the respondent's last appearance in court, when he or she actually appeared in the courtroom to make sure that there are no unserved attachments.
11. After the file has been fully reviewed and prepared for court, clerks will check the box on the Master Main page to indicated that this digital record has been audited for accuracy.
12. If courtroom clerks receive any documents from the front office that have not been scanned (service returns, served attachments, mail correspondence, etc.), they will scan them into JFACTS prior to the hearing. If it is not possible, the clerk will take the documents into court and present to the magistrate, if necessary, during the course of the hearing, and the documents will be scanned after court.
13. Any important info should be notated on the docket sheet, including date of service, related court dates, appear & pay status, special items for the magistrate's attention, etc. Make copies of this docket sheet (with notes added) for the magistrate, state attorney, legal assistant, and court officer.
14. Print off Magistrate's Long Sheet; ensure that all necessary information is added and correct.

Conducting Court

1. Clerks shall open the digital recorder system and record all hearings as directed by the Court.
2. Clerks must listen to parties' announcements as to any changes to address/phone numbers and update JFACTS accordingly. Make sure to click "Update Person" after changes are made to each individual, or the new information will be lost.
3. Rule Docket Entries: All entries should state which parties are present in court, and list the names of all witnesses. It is not necessary to state the name of the court officer or the state attorney. Entries should describe the ruling of the court with all relevant details, including reasons for dismissal from the docket or continuance. Rule Docket entries should be a snapshot of what occurred in court.
4. Courtroom clerks should organize all signed orders alphabetically, in accordance to how they appear on the docket sheet. Any other documentation, including evidence, copies of in court summonses, reissue packets, attachments/mittimus, requests for legal counsel, etc. **should be paper clipped to the order and kept with the order.** Do not keep a separate stack of documents. Clerks must double check that all orders have been received by the end of the docket.

Processing Orders After Court

1. Clerks should double check their rule docket entries and continuance dates for each case. Corrections/additions to JFACTS info should be made. Errors on orders should be notated at this time, and a request for amended order should be made as soon as possible, if necessary.
2. Clerk Notes tab should be updated with necessary information, such as: Petition reissued to Respondent; Order sent to Vital Records; Attachment/Mitt scanned to HCSO; Recall on 08/15/2009 attachment sent to HCSO; (Attorney's Name) appointed as attorney for Resp., all necessary documents sent; Amended Order requested; etc.
3. All documents are then scanned into JFACTS and named accordingly. Clerk must carefully examine scanned documents to make sure all pages are scanned, are visible, and named properly before releasing the images. THIS STEP IS CRITICAL TO THE SUCCESS OF THE

DIGITAL SYSTEM. GIGO – GARBAGE IN, GARBAGE OUT. Documents should then be clipped back together according to docket number.

4. Before any document is disposed of, the clerk must go back to her desk and open each image scanned to review for accuracy. Each document must be:
 - a. In the correct index
 - b. Named correctly (either Legal Record, Supporting Docs, or Confidential Info; ensure subcategory is correct)
 - c. Document tags are used when possible to further identify document
 - d. Dated correctly
 - e. All pages are visible and oriented correctly (no sideways/upside down docs)
5. Copies of orders will not be made. Reissue packets shall be sent out as usual. Attachments/Mitts are scanned to clerk's desktop and forwarded to HCSO.
6. Openings/Closings are to be drafted as usual. Original orders are sent along with O/C, **including orders appointing legal counsel and attachments/mitts.**
7. The O/C will not be sent to the Judge until any court appointments have been processed, so that the order of appointment will be with the last court order. Court appointment orders should be dated the same date as the court order. Clerks are advised to assign court appointed attorneys by calling attorneys instead of sending emails. If an attorney is unavailable to take the appointment, the clerk should move on to a different attorney until one is secured for the case, and should not wait to have a phone call or email returned to appoint a lawyer for the respondent, unless there is a reason to appoint a particular attorney to the case.

Ensuring every order is correct – Order Checklist

On Every Order:

- Docket Number
- TCSES Number
- Parties' Names
- Parties Present
- Continuance Date & Time

On First Order Submitted:

- Date of Hearing
- Date of Judgment
- Entry Date
- Certificate of Service Date

NEW ATTACHMENT/MITTIMUS SUBMISSION PROCESS TO THE HAMILTON COUNTY SHERIFF'S OFFICE

- Court clerk scans all attachments/mittimus issued on court's docket in one scan and sends to their desktop
- This email is forwarded to the Hamilton County Sheriff's office at the following address:
FugitiveChildSupport@hcsheriff.gov
- In the body of the email, the clerk will write the following (see example):
"Please see the attached documents, which are arrest warrants for the following:
 - John Doe
 - Jane Smith
 - Mickey Mouse
 - Minnie Mouse

If you have any further questions, please contact me at the number listed below."

- The original attachment/mittimus are scanned into the file.
- Courtroom clerk is to note in the Clerk's Notes section "Attachment/Mittimus emailed to HCSO, 3-1-12"
- When the copies are returned from the sheriff's office, the served or unserved copy shall be scanned into the file by the front office staff.

*NOTE: Attachments/Mittimuses sent to other counties in Tennessee will continue to be processed as in the past – the original will be mailed to the county sheriff's office with a copy scanned to our file. Then also email a copy to the HCSO and mark it "ORIGINAL SENT TO "X" COUNTY TO BE SERVED; COPY TO BE HELD ON FILE IN HAMILTON COUNTY."

DO NOT FORGET: Attachments/Mittimus that are issued for a person who lives in another state cannot be submitted to that other state. They are to be marked "TO BE HELD ON FILE IN HAMILTON COUNTY" and sent only to the HCSO.

Miscellaneous

- General
- Acronyms
- 1099's
- Cybersecurity Awareness
- Unclaimed Property Act

Miscellaneous General

1. Court Clerk's requirement to attend meetings is found in Tennessee Code Annotated 18-1-507.
2. Tennessee State Court Clerk's Conference (TSCCC) is created with Clerks as members and deputy clerks as associate members is found in Tennessee Code Annotated 18-1-501.
3. The State Court Clerk's Conference is divided into 3 Regional Associations: East, Middle and West. The membership dues for the conference and each regional association shall be submitted to the regional treasurer and they will remit the state dues to the TSCCC treasurer. These dues should be included in the clerk's office budget annually. The hospitality dues are not included in the annual budget of the clerk but should be remitted directly to the TSCCC treasurer and should come from the private funds of the clerk.
4. Each region has a Spring and Fall meeting at various locations within each area. TSCCA has a Spring and Fall meeting at various locations across the state, usually over multiple days. The Administrative Office of the Courts will send out registration information for the meeting or conference and they will provide the lodging and reimbursement for meals and mileage pursuant to their guidelines.
5. County Officials Association of Tennessee has a Spring and Fall meeting or conference. The fees for these functions, along with meals, lodging and mileage will need to be included in the official's annual budget.
6. Other associations will also have meetings and conferences periodically like Conservatorship Association of Tennessee (CAT), Tennessee Association of Property Tax Professionals (TAPTP), not to mention others. Dues and conference fees and expenses should come out of the official's annual budget.
7. Training for the clerks are held mostly at the Spring and Fall conferences. Training for the deputies are held at separate regional locations to be coordinated by the Administrative Office of the Courts.

ACRONYMS

Acronyms

1. **AOC-Administrative Office of the Courts**
2. **CAT-Conservatorship Association of Tennessee**
3. **COAT-County Officials Association of Tennessee**
4. **COOP-County Officials Orientation Program**
5. **CTAS-County Technical Assistance Service**
6. **DOH-Department of Health**
7. **DOR-Department of Revenue (TDOR-Tennessee)**
8. **DOS-Department of Safety**
9. **ETSCCA-East Tennessee State Court Clerk Association**
10. **FBI-Federal Bureau of Investigation**
11. **MHMS-Mental Health Monitoring System**
12. **MTSCCA-Middle Tennessee State Court Clerks Association**
13. **NICS-National Instant Criminal Background Check System**
14. **NCIC-National Crime Information Center**
15. **TACIR-Tennessee Advisory Commission on Intergovernmental Relations**
16. **TAPTP-Tennessee Association of Property Tax Professionals**
17. **TBI-Tennessee Bureau of Investigation**
18. **TJIS-Tennessee Judicial Information System**
19. **TnCIS-Tennessee Court Information System**
20. **TSCCA-Tennessee State Court Clerks Conference**
21. **WTSCCA-West Tennessee State Court Clerks Association**

1099's

1099's

1. **1099 on Investments:** These 1099s are not generated by the clerk and are received in the clerk's office from financial institutions, etc. regarding the investments which the clerk is the custodian for. These funds are usually invested pursuant to a court order. But a clerk can also invest idle funds in their custody pursuant to TCA 8-21-401(i)(8). The clerk would, could or should send a copy of these 1099s annually to the person the investment is for and in the case of a minor, his/her guardian. A copy of the 1099 can be retained for the court's records. If the name and/or address of a recipient is unknown or is returned due to relocation, the clerk would, could or should hold the 1099(s) until the investment is paid out.
2. **1099-NEC:** This is the 1099s that a court clerk would, could or should generate for a service performed. This form replaced the 1099-Misc form in 2020. Attorney's fees, auctioneer services, surveyors, title examiners or any other professional service with an aggregate amount over \$600.00. This amount is reported on line 1 of the 1099-NEC form as non-employee compensation.
3. **1099-INT:** This type of 1099 would, could or should be sent by a clerk for any aggregate amount of interest that exceeds \$10.00 and was paid by the court to an individual. An example of this type is one sent to a purchaser in a tax sale where the property has been redeemed and statutory interest was paid to the purchaser. This is not to be confused with interest earned on investments as above stated in the first type of 1099.
4. **1099-S:** A 1099-S would, could or should be sent by the clerk on real estate transactions wherein the real property was sold and the proceeds were paid into the court and the clerk disbursed the money to heirs, owners, or an administrator (if the court order requires payment to an administrator, the clerk is not required to send a separate 1099 to each heir.)
5. **1099-K:** This type of 1099 is usually received in the clerk's office and is sent from debit/credit card vendors. It is just held by the clerk as the court does not file taxes.

A clerk who is sending 1099s would, could or should obtain the necessary reporting information on a particular individual or entity from a 1096 form.

CYBERSECURITY

CYBERSECURITY AWARENESS GUIDE

As presented by LeeAnn Foster

Founder, Team Foster HR Strategy, LLC

THE TEAM FOSTER PURPOSE

I. OBJECTIVES (1-3)

1. The *Importance* of Cybersecurity Awareness!

- a. Awareness Training is a Must
- b. Attackers go where security is weakest
- c. Awareness Training is essential to reducing cybersecurity risk
- d. But an attacker isn't interested in me . . . – **WRONG!!**
- e. Cybersecurity awareness is for:
 - Employees
 - Supervisors
 - Managers
 - Business Owners

2. Ways to incorporate a *Culture of Cybersecurity* in the workplace and at home to ensure the utmost protection of data and self – *Protect Yourself*

- a. Facts about **Backups**:
 - 35% never backup
 - 20% backup yearly
 - 14% backup monthly
 - 6% backup daily
 - Backups protect when all else fails
 - **NO** level of protection is perfect
 - Only “guaranteed” protection against ransomware
 - Test your backups! Restore, restore, restore . . .
- b. Updates
 - Updates are essential to security
 - What was secure yesterday may not be secure today
 - New software vulnerabilities found every day
 - Over 360k new malware (viruses & ransomware) released every day
 - Nothing is “Set & Forget”
 - Don't Forget:
 - Mobile devices – cell phones & tablets
 - Internet of Things (IoT) – Alexa, Google Home, light bulbs, thermostats, doorbells, surveillance system, smart locks, pet feeder, vacuums, health monitors. . . This could keep going forever!

c. Passwords

- All about Passwords – someone figured out my password. Now I must rename my dog!!
- Managing Passwords:
 - Keep your passwords in a secure location
 - Don't use paper or sticky notes
 - Don't store passwords in clear-text on your computer – Word, Excel, etc.
- Utilize a Password Manager – **Benefits:**
 - One strong password to access them all
 - Encrypted storage of passwords
 - Auto-fill username/password on websites
 - Sync between desktop, laptop, and mobile
- Password Tips
 - Avoid using items that can be associated with you -
 1. Address
 2. Phone numbers
 3. Pet names
 - Use separate passwords for every account
 - Use auto-generated, unmemorable
- Password Percentages
 - 69% Passwords shared with colleagues
 - 95% Passwords shared with household
 - 59% One password for all accounts
 - 86% Passwords are too simple
- Password Hack Times:

Length of Password	Time to Hack
***** 7 Characters	0.29 minutes
***** 8 Characters	5 Hours
***** 9 Characters	5 Days
***** 10 Characters	4 Months
***** 11 Characters	10 Years
***** 16 characters	74 Years

- 20 Most Popular Passwords by Rank and Year:

RANK	2018	2019	2020
1	123456	123456	123456
2	password	123456789	123456789

3	123456789	qwerty	picture1
4	12345678	Password	password
5	123445	1234567	12345678
6	111111	12345678	111111
7	1234567	12345	123123
8	sunshine	lloveyou	1234
9	qwerty	111111	1234567890
10	lloveyou	123123	senha
11	princess	abc123	1234567
12	admin	qwerty123	qwerty
13	welcome	1q2w3e4r	abc123
14	666666	Admin	Million2
15	abc123	qwertyuiop	000000
16	Football	654321	1234
17	123123	555555	iloveyou
18	monkey	lovely	aaon431
19	654321	77777777	password1
20	!@#\$%^&*	welcome	qqww1122

d. Passphrases vs Passwords

- Passphrases are useful when passwords must be typed in
- They should not be easy to guess
 - At least 12 characters, but 15 or more is far better
 - Length is better than complexity (passphrases)
 - Bad password – P@ssw0rd
 - Great passphrase – MydaughterwasbornOctober1994!

e. Two-Factor Authentication

- What is 2FA?
 - Beyond a username and password
 - Second form to prove it is you
- Your one-time code is . . .
 - Email
 - Phone call
 - SMS/Text

f. Links

- Determine if a link is safe in 4 steps!
 1. Were you expecting the link?
 - Not just in email. . .
 - Also in Social Media, SMS/Message, Zooms, Teams, Slack
 2. Where did the link come from?
 - Hover over the link to ensure that it leads to where it says it does
 3. Is it a site you recognize?

-Does the link feel familiar to you? Be skeptical.

4. Does it pass the 1st 3 tests?

-Still use caution. When in doubt, throw it out.

g. Malware

- What is Malware?

Software that is specifically designed to disrupt, damage, or gain unauthorized access to a computer system.

- The Top 11 PC Malware Threats:

1. Adware
2. Ransomware
3. Trojan
4. Computer Viruses
5. Worms
6. Rootkits
7. Spyware
8. Keyloggers
9. Bots
10. Spear Phishing
11. Scareware

- Beware of Malware

-92% of malware is delivered by email

-Stop & think before you click: Do I recognize the sender?

h. Phishing

- What is phishing?

-A phishing email is a cybercrime that relies on deception to steal confidential information from users and organizations.

-Phishing victims are tricked into disclosing information they know should be kept private.

-In a phishing email, cybercriminals will typically ask for your:

1. Date of birth
2. Social security numbers
3. Phone numbers
4. Credit card details
5. Home address
6. Password information

i. Phone Scams

- What is Social Engineering?

Social engineering is the term used for a **broad range of malicious activities accomplished through human interactions**. It uses

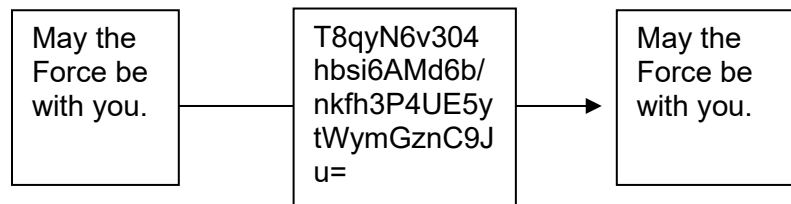
psychological manipulation to trick users into making security mistakes or giving away sensitive information.

- Phone numbers can be easily spoofed:
Spoofing is the act of disguising a communication from an unknown source as being from a known, trusted source. Spoofing can apply to emails, phone calls, and websites, or can be more technical, such as a computer spoofing an IP address, Address Resolution Protocol (ARP), or Domain Name System (DNS) server.
 1. Make the caller provide verification
 2. Hang up and call back a published number
- Other common phone scams
 1. Grandparent Scam:
Scammers who gain access to consumers' personal information – by mining social media or purchasing data from cyber thieves – are creating storylines to prey on the fears of grandparents. The scammers then call and impersonate a grandchild in a crisis situation, asking for immediate financial assistance.
 2. Tech support – Microsoft, Apple, Dell, etc. will **NEVER** contact the average user out of the blue!

j. General Tips & Privacy

- USB Drives & More
-Do NOT connect unknown or unauthorized media or devices
- Encryption
-What is Encryption?
Encryption in cyber security is **the conversion of data from a readable format into an encoded format.**
-Encrypted data can only be read or processed after it's been decrypted.
-Encryption is the basic building block of data security.
-How Encryption Works:

Encrypted Plaintext Message	Encrypted Ciphertext	Decrypted Plaintext Message
--------------------------------	-------------------------	--------------------------------



- Why use Encryption?
 - Can help protect your data
 - Protects data sent or received
 - Protects devices (Helpful if device is lost/stolen)
 - Internet Safety Quick Tips – BEWARE WHAT YOU SHARE
 - Never install anything based on a pop-up when visiting a website
 - Avoid public WiFi, computers, and charging station
 - Trusted websites can have hosted malware called malvertising
 - Internet Privacy
 - Data is the new gold!
 - Are you oversharing?
 1. Default privacy setting on social media
 2. Vacation photos & checking-in
- 3. What to do after being scammed because the situation is now “when” not “if”**
- a. Oh No – You’ve been scammed – ACT NOW
 - It happens. Don’t be ashamed.
 - Don’t panic. But – don’t wait around.
 - Unplug computer
 - Contact tech support
 - Write down details
 - b. Ransomware of Scam

Report the incident to:

 - Law Enforcement
 - Better Business Bureau: <https://www.bbb.org/scamtracker>
 - Federal Bureau of Investigation
 - If you or your organization is the victim of a network intrusion, data breach, or ransomware attack, contact your nearest FBI field office or report it at tips.fbi.gov
 - Visit this website: <https://www.nomoreransom.org/>

II. MORE RESOURCES

1. When in doubt, ask questions
 - a. Your IT dept/provider
 - b. Don’t stop here! Attacks change, so should you
2. Additional Resources
 - a. StaySafeOnline.org - numerous free resources
 - b. Stop. Think. Connect. – free, little bit of everything
 - c. TreeTop Security – Cybersecurity Awareness Training (free)

III. THE MAIN THING

When in doubt, throw it out!

Clerk requirements:

1. Annual Cyber Security is required for all clerks and deputy clerks.
2. Back-up validation from the Administrative Office of the Courts.
3. Cyber Attack Recovery Plan
4. Comfort Letter to the Administrative Office of the Courts.
5. Questionnaire

Cybersecurity Posture

As more county government offices fall victim to cyberattacks, it is important that county officials are aware of potential threats and have identified cybersecurity risks. To determine the office's cybersecurity posture, the following questions should be addressed. Depending on the office's environment, some of these questions may need to be addressed by the accounting software vendor, county IT personnel, or other service provider.

Questions to be Directed to Vendor/IT Personnel/Service Provider

(Please note that these questions could refer to controls that are the responsibility of the county official rather than the vendor/IT personnel/service provider depending on the terms of the contracts or agreements. All questions should be addressed.)

- How are operating system updates applied to workstations and servers? Are these updates installed automatically or on a set schedule so that all current updates are installed timely?
Workstations: Updates are applied automatically through various update server(s) specified in workstation group policy configurations.
Linux Servers: Security updates are applied automatically. Manually as needed.
Windows Servers: Updates are applied automatically through various update server specified in workstation group policy configurations. Manually as needed.
- Are software and database patches applied to accounting software?
Vendor LGC installs patches to their accounting software.
- Do the workstations and servers have antivirus software installed? Is this software configured to receive definition updates automatically? How often does it run a scan to detect malicious software?
Trellex (formerly McAfee) is utilized. DAT updates occur daily and a smart scan function is run throughout the day, to detect malicious software in a manner that minimizes negative effects on system performance.
- If wireless networks are used, do they use encryption? Has the password for the devices used (routers, access points, etc.) been changed from the default password assigned by the manufacturer? Is the network name (SSID) hidden?
No Wireless
- Are firewalls used? If so, what product is used and is it configured to limit access to your network? Are logs reviewed?
Ingress and Egress traffic runs through firewalls contained with the AOC's Cisco Meraki SD-WAN networking infrastructure. Logs are reviewed as needed.
- Do you allow remote access to your system via VPN, remote desktop software, or other means? What product is used and how is it secured?
VPN access is by default, disabled for all users. VPN access must be requested by the clerk on a per user basis. When enabled, VPN Connectivity is provided through the AOC's Cisco Meraki SD-WAN networking infrastructure. Cisco AnyConnect client software is used for this purpose. Authentication and access security are controlled through RADIUS authentication, through interaction with the AOC's eDirectory services. Both the AOC and LGC use RDP to perform remote manage functions TNCIS Windows servers, AOC uses SSH connectivity for remote management functions on Linus system. The AOC uses a Bomgar remote support appliance to securely support endpoint management functions.
- Do you ever perform vulnerability scans of the network?
AOC does not perform vulnerability scans.

- Does the backup process capture all data vital to the operation of the office? In addition to the accounting system, are other critical files such as spreadsheets and documents backed up?
Backups are performed nightly on the Linux and Windows servers. Documents that are saved on the server from the workstations are included on the backups. Workstations are not directly backed up.
- If the office were to fall victim to a ransomware attack, is the backup process configured so that backup data would not be encrypted in the attack?
We use external drives for off-site backups weekly. This provides an “Air gap” that the ransomware would not be able to reach.
- Are there any other measures in place to protect the office from a cyberattack?
Network traffic is scanned by the AOC’s Cisco Meraki SD-WAN networking infrastructure. AOC Trellex (formerly McAfee) Web Control assists in blocking malicious websites. AOC Internet Email Gateway provides email scanning.

Questions to be Addressed by Official

- Do you have an inventory of all your software and hardware? Have you documented the storage location of sensitive or confidential information? An example of sensitive or confidential information would include payroll information maintained in a software database or in a spreadsheet or pdf document residing on a workstation.
We do have a complete inventory list of all our software and hardware. This inventory is kept in a three-ring binder in our office vault as well as a copy being retained off site in the lock box at First Commerce Bank. Adoption files are kept in the vault, the adoption minute book is secured by a lock and key; individual files contain confidential information in sealed envelopes and is not scanned for storage. All employee records with confidential information is filed with the County Finance Department.
- Does the office have a written plan to follow in case of an attack? Is the plan reviewed and kept current?
The Lincoln County Clerk and Master’s Office does have a plan for attacks, natural disasters and fires. This plan is kept in a three-ring binder in the office vault with a copy being retained off-site in the lock box at First Commerce Bank. This plan is reviewed annually and updated as needed or as circumstances change.
- Do all employees participate in security awareness training? Examples would be attending security awareness presentations at conferences, viewing training videos, or reading articles related to security threats.
The clerk and deputies have received certificates for online security training. This is an ongoing office practice. In addition, the clerk has participated in some security training presented by the Court Clerk’s Association. All employees have viewed videos and material on Sovereign Citizens.
- Many insurance companies offer cyber insurance. Cyber insurance may cover losses due to a data breach, malware infection, extortion demand, ransomware attack, or phishing scam. Is the office currently insured against cyberattacks? What types of incidents are covered and are there any exclusions?
Our cyber insurance is provided by Bagley and Bagley. A current copy is kept in a 3-ring binder in our office vault with a copy being retained off-site in the lock box at First Commerce Bank.

UNCLAIMED PROPERTY ACT



Uniform Disposition of Unclaimed Property Act

Reporting Instructions

Report & Remittance
Due by November 1 of each calendar year

David H. Lillard, Jr., Treasurer
State of Tennessee

Updated April 2022

treasury.tn.gov/unclaim



Table of Contents

	PAGE
Quick Tips	3
Security Delivery Instructions.....	4-5
Electronic Reporting – Report IT TN Guidelines	6
Report Year Conversion Table.....	7
Due Diligence	8
Sample Due Diligence Letter	9
Dormancy Periods	10
Ownership Codes.....	10
Relationship Codes	11-12
NAUPA Property Type Codes.....	13-14
Gift Certificates / Gift Cards	15
Cashier Checks	16
Traveler’s Checks	16
Penalty Calculation Sheet	17
Safe Deposit Box Guidelines	18
Checklists	19

Quick Tips

Making Payments	All payments are required to be submitted electronically. Payment options are ACH or Fed Wire.
Physical Stock Certificates	Hare & Co. / Account 822474 / FEIN 13-6062916 See additional instructions on page 5 of the holder manual.
Stock Registration and Delivery	Music City and Company / FEIN 30-0187547 Delivery DTC. See additional instructions on page 4 of the holder manual.
Dividend Reinvestment Plans	See detailed instructions on page 4 of the holder manual.
Mutual Fund Registration and Delivery	See detailed instructions on page 4 of the holder manual.
Safe Deposit Boxes	See detailed instructions on page 18 of the holder manual.
Remit and Report Due Date	November 1 For all property presumed abandoned as of June 30th.
Electronic Reporting "REPORT IT TN"	Required in NAUPA format. No paper reports accepted. Must submit file electronically through "REPORT IT TN". See additional instructions on page 6 of the holder manual.
Aggregate Instructions	Although properties less than \$25 can be reported in aggregate, please provide owner detail information if available.
Due Diligence	Required 60 to 180 days prior to submission on properties \$50 and above. Costs may NOT be charged to the owner's account. See additional instructions on page 8 of the holder manual.
Minimum Reporting Amount	None. All amounts are reportable.
Record Retention	10 years. Section 66-29-126
Business to Business	Not exempted. See Tennessee Code Annotated, Section 66-29-105 C(1). May be deferred until the business relationship ends.
Reciprocal Reporting	Allowed only for incidental property with prior approval. Incidental property is defined as 10 or fewer owners with a total value of \$1,000 or less.
Negative Reports	Not required at this time. If negative reports are remitted they must be submitted through "Report IT TN". No paper reports will be accepted.
Penalties	See detailed instructions on page 17 of the holder manual.

Security Delivery Instructions

as of current date

	Nominee Name	Tax ID #	Instructions
DTC & DWAC Eligible Securities	Music City & Co.	30-0187547	<p>Advance notice REQUIRED. Notify custodian two (2) business days prior to transfer at UPCH.Custody@avenuinsights.com. Stock should be delivered via DTC or DWAC to our custodian. Send confirmation of transfer to UCP.Securities@tn.gov. Transfers not preapproved will be reversed.</p> <p>Mellon Security Trust Company (Agent Ban #26500) DTC Participant #901 Mellon Bank/Account #822474 Include Reporting Entity in Description Field</p>
Non DTC & DWAC Eligible Securities	Music City & Co.	30-0187547	<p>If stock cannot be delivered via DTC or DWAC, only then may stock be registered in Book Entry Shares/Direct Registration Shares (DRS). Ensure that interested party statements are sent to the addresses below at the time of the transfer and a copy is e-mailed to UPCH.Custody@avenuinsights.com.</p> <p>Music City & Co. C/O Avenu Insights & Analytics Attention: Custody Department 100 Hancock Street, 10th Floor Quincy, MA 02171 and to State of Tennessee Unclaimed Property P.O. Box 198649 Nashville, TN 37219-8649 or Email to UCP.Securities@tn.gov Remit cash-in-lieu for fractional shares for each owner and email transaction detail to UCP.Securities@tn.gov.</p>
Open End Mutual Funds	Mac & Co.	23-6019000	<p>Accounts held for the State must be registered in the name of Mac & Co. Avenu Insights will provide account numbers for all mutual funds transferred to the State's account. Contact Avenu Insights at UPCH.Custody@avenuinsights.com to obtain account numbers 3-4 days prior to attempting delivery. Include CUSIP, name of the fund, share amount and account number.</p> <p>Mac & Co. Account # 822474 State of Tennessee Mutual Fund Operations 500 Grant Street Room 151-1010 Pittsburgh, PA 15258 Tax ID: 23-6019000 Dividend Selection = Pay In Cash Please send statements to: Avenu Insights & Analytics Attn: Mutual Fund Operations 100 Hancock Street, 10th Floor Quincy, MA 02171 and to State of Tennessee Unclaimed Property P.O. Box 198649 Nashville, TN 37219-8649 or Email to UCP.Securities@tn.gov Remit cash-in-lieu for fractional shares for each owner and email transaction detail to UCP.Securities@tn.gov.</p>

Security Delivery Instructions

as of current date

	Nominee Name	Tax ID #	Instructions
Closed End Mutual Funds	Music City & Co.	30-0187547	<p>Advance notice REQUIRED. Notify custodian two (2) business days prior to transfer at UPCH.Custody@avenuinsights.com. Deliver full shares via DTC instructions above.</p> <p>Remit cash-in-lieu for fractional shares for each owner and email transaction detail to UCP.Securities@tn.gov.</p>
Physical Stock Certificates	Hare & Co.	13-6062916	<p>Your report will be considered late until your shares are received correctly. Send all securities DTC & DWAC per above. Physical certificates are only accepted when they cannot be sent DTC, DWAC or DRS per above instructions. Notify custodian two (2) business days prior to transfer at UPCH.Custody@avenuinsights.com. Email a copy of the certificate to UCP.Securities@tn.gov. Mail certificates to the address below:</p> <p>The Depository Trust Company Acct # 822474 570 Washington Boulevard - 5th Floor Jersey City, NJ 07310 ATTN: BNY Mellon / Branch Deposit Department</p> <p>Remit cash-in-lieu for fractional shares for each owner and email transaction detail to UCP.Securities@tn.gov.</p> <p>Certificates will be refused if delivered without prior notice.</p> <p>No certificates will be accepted that require fees to be paid for by the State.</p>
Fed Book Entry	N/A	N/A	<p>Advance notice REQUIRED. Notify custodian two (2) business days prior to transfer at UPCH.Custody@avenuinsights.com.</p> <p>Transfers not preapproved will be reversed. Account specifics are:</p> <p>Federal Reserve Bank of New York ABA # 30210-0001-2 Bank of NYC/Trust (822474) For: State of Tennessee</p>
Foreign Securities	N/A	N/A	<p>Contact custodian at UPCH.Custody@avenuinsights.com to obtain delivery instructions. If the custodian determines that the securities cannot be delivered or liquidated do not report the securities.</p>
Worthless, No Value or Non-Transferable	N/A	N/A	<p>Do not report or transfer to our office or custodian. Do not add any non-reportable securities to a State of TN UCP Escheatment Treasury accounts.</p>

Note: If you are delivering multiple shares of the same issue, if possible, please deliver shares in one lot. Deliver any residual interest, dividends, etc. A.S.A.P. Do not leave any residual interest, dividends, reinvested growth, etc. in escheatment account.

Electronic Reporting

Report It TN

All Holders are required to submit an annual report to the web application, "REPORT IT TN," by November 1st if there is unclaimed property to report.

You can download the complete reporting guide at:

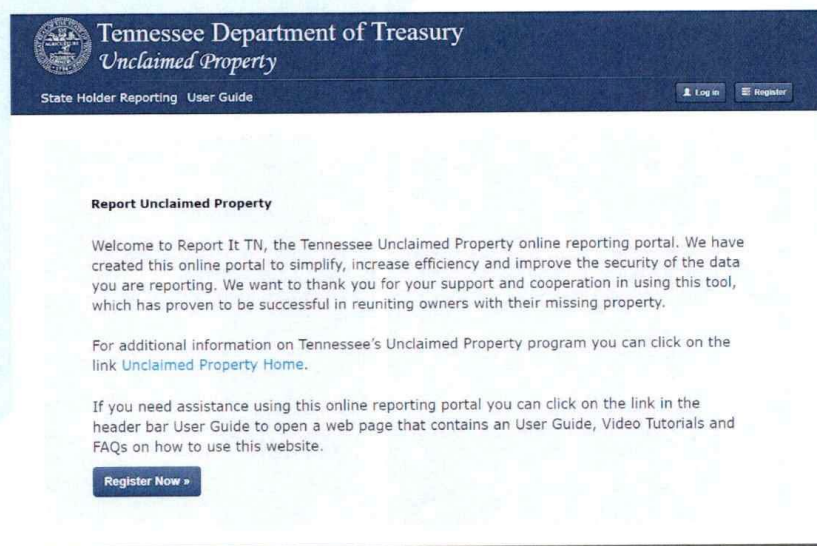
<https://treasury.tn.gov/Reporting> - "under Forms and Guides"

Inside this web application, the holder can submit positive (required) and negative (optional) reports. Negative reports should be submitted through Report IT TN. A negative NAUPA file is not necessary when reporting. All payments are required to be submitted electronically. Payment options are ACH debit/credit or Fed Wire.

Prior to submitting a report, you will need to create a file that meets all NAUPA specifications.

For more information about specifications and software to create the file, please refer to:

<https://www.ReportItTN.gov/>



Report Year Conversion Table

Most property -3 Year Abandonment Period

Items Issued or Last Activity Date	Report By Date
7/1/2017 thru 6/30/2018	November 1, 2021
7/1/2018 thru 6/30/2019	November 1, 2022
7/1/2019 thru 6/30/2020	November 1, 2023
7/1/2020 thru 6/30/2021	November 1, 2024

Public Agencies & Payroll -1 Year Abandonment Period

Items Issued or Last Activity Date	Report By Date
7/1/2019 thru 6/30/2020	November 1, 2021
7/1/2020 thru 6/30/2021	November 1, 2022
7/1/2021 thru 6/30/2022	November 1, 2023
7/1/2022 thru 6/30/2023	November 1, 2024

*66-29-125(a) property held changed from calendar year to fiscal year

Due Diligence


- Required for each owner with an account balance of \$50 or greater.
- Due diligence consists of mailing a first class letter to the owner.
- The purpose of the letter is to give the owner the opportunity to collect the funds from you and relieve you of the liability to have to report and remit the funds to the Unclaimed Property Division.
- You MUST wait at least 60 days after you send the letters to the owners before you send in your report to the Unclaimed Property Division. Note: You are still required to submit your report by November 1.
- You cannot wait any longer than 180 days from the time you send the letters to the owners to the time you send in your report to the Unclaimed Property Division.
- It is in your company's best interest to return the funds to the owner rather than turn the funds over to the Division of Unclaimed Property. Owners that are still customers or employees of yours tend to get upset when their funds are turned over to the Division of Unclaimed Property.
- You may be subject to penalties if you do not comply with the due diligence requirements.



IMPORTANT: You may NOT charge or deduct a fee from the owners account to perform the due diligence. If you use a vendor to perform your due diligence, make sure they are not charging a fee to the owner. If a vendor does charge or deducts a fee, it does not constitute your requirement of due diligence and you may be subject to penalties.

Sample Due Diligence

Below is a sample Due Diligence Letter. If you use a format different than below, you must ensure that you include all requirements found under Tennessee Code Annotated 66-29-129.



Widget Corporation
1st Avenue South
Big City, US 99999-9999
(123) 555-1234

May 1, 2020
Owner Name
1234 Any Road St. N
Any Town, US 99999-9999

Property Description: xxxxxx
Balance: \$xxxx.xx

Dear Owner Name:

We are holding unclaimed property due to the person listed above. The State of Tennessee requires us to notify you that your property may be transferred to the custody of the treasurer if you do not contact us within thirty (30) days after the date of this notice. The owner may claim this property by contacting us at the address and/or telephone number listed below.

Widget Corporation
1st Avenue South
Big City, US 99999-9999
(123) 555-1234

If we do not hear from the owner by (the last date your system can remove items for refund before reporting to the state), the law requires us to submit this property to the Tennessee Treasury Department Unclaimed Property Division. You will then have to file a claim with the State of Tennessee to receive your property. Property, not legal tender, may be subject to sale by the treasurer.

I.M. HELPFUL
Widget Company

Remember, you are required to wait 60 days after you mail the due diligence letter before you send the funds to the state. If an owner comes forward within those 60 days, you are required to return the funds to the owner.

Reporting Made Simple.

If you return the property to your customers,
you will not have to report that record.

Dormancy Periods

Property Type	Period
Liquidations	1 year
Wages, Wage-Related Expense Checks	1 year
Fees for Professional Services and Commissions	1 year
State and Local Governments	1 year
Safe Deposit Boxes (Not Financial Institutions)	2 years
Utility Deposits and Refunds	1 year
Demutualized Shares	3 years
Dividends	3 years
Stock / Shares	3 years
Safe Deposit Boxes (Financial Institutions)	4 years
Cashier Checks	3 years
Casualty Insurance	3 years
Certified Checks	3 years
Checking Accounts	3 years
Gift Certificate (See note on page 15)	5 years
Fiduciaries	3 years
Life Insurance	3 years
Savings Accounts	3 years
Vendor Checks / Business Expense Checks	3 years
Money Orders	7 years
Traveler's Checks	15 years
All Other Property Not Listed Above	3 years

Ownership Codes

Code	Short Description	Definition
AP	Aggregate Property	This property represents a group of properties that have been aggregated together. This is only allowed if they are less than \$25.00 per item. The owner records should be reported, if known, and kept for future inquiries on claims.
OT	All Owners Except Aggregate or Unknown	This property represents individual property records that are not reported as aggregate or unknown, and is used when an owner's name is known and included in the report.
UN	Unknown Owner (No Name Available)	This property represents individual property records in which the original owner's name is unknown.

Relationship Codes

Code	Short Description	Definition
AD	Administrator	The person appointed by the court to handle the estate of someone who died without a will, with a will with no nominated executor, or the executor named in the will has died, has been removed from the case, or does not desire to serve.
AG	Agent For	A person who is authorized to act for another (the agent's principal) through employment, by contract or apparent authority.
AF	Attorney For	A person who has been qualified by a state or Federal court to provide legal services, including appearing in court, and is authorized to act for another.
AN	(And) Unspecified Joint Relationship	Unspecified joint relationship including 'AND'.
BF	Beneficiary	Any person or entity (like a charity) who is to receive assets or profits from an estate, a trust, an insurance policy or any instrument in which there is distribution.
CP	Community Property	Property or earnings received by a husband and wife during marriage, other than by gift, devise, or descent. Separate property is property owned by a spouse before marriage or received during the marriage by gift, devise or descent. In some jurisdictions, earnings from separate property are also separate property and in some jurisdictions, such earnings are community property. Recognized by California, Arizona, New Mexico, Texas, Nevada, Idaho, Washington, Wisconsin, Louisiana and Puerto Rico.
CN	Conservator	A guardian and protector appointed by a judge to protect and manage the financial affairs and/or the person's daily life due to physical or mental limitations or old age.
CF	Custodian	A person with whom some article is left, usually pursuant to a contract (called a "contract of bailment"), who is responsible for the safe return of the article to the owner when the contract is fulfilled.
DF	Defendant	The party sued in a civil lawsuit or the party charged with a crime in a criminal prosecution.
ES	Estate	All the possessions of one who has died and are subject to probate (administration supervised by the court) and distribution to heirs and beneficiaries, all the possessions which a guardian manages for a ward (young person requiring protection and administration of affairs), or assets a conservator manages for a conservatee (a person whose physical or mental lack of competence requires administration of his/her affairs).
EX	Executor or Executrix	The person appointed to administer the estate of a person who has died leaving a will which nominates that person.
FB	For Benefit Of	A person who is entitled to property that is held by another person (typically a custodian or trustee). FB is typically used in trustee, self-directed, inherited, education and transferred accounts.
GR	Guardian	A person who has been appointed by a judge to take care of a minor child (called a "ward") or incompetent adult personally and/or manage that person's affairs.
HE	Heir	Anyone who receives property of a deceased person either by will or under the laws of descent and distribution. (Explanation: a devisee under a will is also an "heir", even though unrelated to the decedent.)
IN	Insured	The person or entity who will be compensated for loss by an insurer under the terms of a contract called an insurance policy.
JT	Joint Tenants	An account held in joint tenancy presumes a right of survivorship, but this presumption can be overcome by evidence that the account was really the property of only one, and the joint tenancy was for convenience. Right of Survivorship is not specifically stated.
JS	Joint Tenants with Rights of Survivorship	A type of account which is owned by at least two people, where all tenants have an equal right to the account's assets and are afforded survivorship rights in the event of the death of another account holder. In this type of account, a surviving member will inherit the total value of the other member's share of account assets upon the death of that other member. All members of the account are afforded the power to conduct investment transactions within the account as well.

Relationship Codes

Code	Short Description	Definition
TC	Tenants in Common	A type of account which is owned by at least two people with no rights of survivorship afforded to any of the account holders. In this type of account, a surviving tenant of the account does not necessarily acquire the rights (and account assets) of the deceased person. Rather, each tenant in the account can stipulate in a written will how his/her assets will be distributed upon his/her death. Generally, the member ownership in the account is determined on a pro rata basis, meaning that if there are two tenants in the account, each will have a 50% claim on the account's value.
JE	Tenants in Entireties	Joint ownership of property or securities by a husband and wife where, upon the death of one, the property goes to the survivor.
OR	(Or) Unspecified Joint Relationship	Unspecified joint relationship including 'OR'
OT	Other Relationship	Relationship other than specified in this list. Additional details should be submitted with the property.
PD	Payable On Death	Account is payable on Death to an alternate owner. Upon the original owner's death, the beneficiary must supply identification and a copy of the original owner's death certificate.
PA	Payee	The one named on a check or promissory note to receive payment.
PO	Power of Attorney	A written document signed by a person giving another person the power to act for the signer in designated circumstances and with respect to designated property. Explanation: There are both general powers of attorney which give the authorized party broad discretion and special powers of attorney that are limited in scope.
RE	Remitter	Used primarily on official checks. The Remitter is the person who purchased the official check. This relationship is separate from the Holder who turns the property over to the state.
SO	Sole Owner	Sole Owner is used when there is only a single owner for the property, and that person has all rights to the ownership of the property.
TE	Trustee	A person or entity who holds the assets (corpus) of a trustee for the benefit of the beneficiaries and manages the trust and its assets under the terms of the trust stated in the Declaration of Trust which created it.
UG	Uniform Gifts to Minor	Property that is gifted to a Minor under the Uniform Gifts to Minors Act – (UGMA). This act allows minors to own property such as securities. Under the UGMA, the ownership of the funds works like it does with any other trust except that the donor must appoint a custodian (the trustee) to look after the account. Regardless of whether the minor has reached the age of majority, they should be coded with the UG relation. The custodian on the account should be coded as CU.
UT	Uniform Transfer to Minor	Property that is gifted to a minor under the Uniform Transfer to Minors Act – (UTMA). This act allows a minor to receive gifts such as money, patents, royalties, real estate and fine art, without the aid of a guardian or trustee. The gift giver or an appointed custodian manages the minor's account until the minor is of age (usually 18 or 21).
UN	Unknown	The owner's relationship to the property is not known.
UF	Usufruct	Usufruct is a real right in a property owned by another, normally for a limited time or until death. Simply stated, it is the right to use the property, to enjoy the fruits and income of the property, to rent the property out and to collect the rents, all to the exclusion of the underlying real or naked owner. The usufructuary has the full right to use the property but cannot dispose of the property nor can it be destroyed.

NAUPA Property Type Codes



Financial Institution Accounts

AC01	Checking Accounts (3)	AC06	Security Deposits (3)
AC02	Savings Accounts (3)	AC07	Unidentified Deposits (3)
AC03	Matured CD or Sav Cert (3)	AC08	Suspense Accounts (3)
AC04	Christmas Club Funds (3)	AC99	Aggregate Account Balances Under \$50.00 (3)
AC05	Money on Dep to Secure Fund (3)		

Checks

CK01	Cashier's Checks (3)	CK11	Pension Checks (3)
CK02	Certified Checks (3)	CK12	Credit Checks or Memos (3)
CK03	Registered Checks (3)	CK13	Vendor Checks (3)
CK04	Treasurer's Checks (3)	CK14	Checks Written Off to Income (3)
CK05	Drafts (3)	CK15	Other Outstanding Official Checks (3)
CK06	Warrants (3)	CK16	CD Interest Checks (3)
CK07	Money Orders (7)	CK99	Aggregate Uncashed Checks Under \$50.00 (3)
CK08	Traveler's Checks (15)		
CK09	Foreign Exchange Checks (3)		
CK10	Expense Checks (3)		

Educational Savings Accounts

CS01	Educational Savings Account - Cash (3)	CS03	Educational Savings Account - Securities (3)
CS02	Educational Savings Account - Mutual Funds (3)		

Courts / Legal

CT01	Escrow Funds (1)	CT05	Other Court Deposits (1)
CT02	Condemnation Awards (1)	CT06	Child Support Payments (1)
CT03	Missing Heir's Funds (1)	CT99	Aggregate Court Deposits Under \$50.00 (1)
CT04	Suspense Accounts (1)		

Health Savings Accounts

HS01	Health Savings Account (3)	HS02	Health Savings Account Investment (3)
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Insurance

IN01	Individual Policy Benefits or Claim Payments (3)	IN05	Premium Refunds (3)
IN02	Group Policy Benefits or Claim Payments (3)	IN06	Unidentified Remittances (3)
IN03	Proceeds Due Beneficiaries (3)	IN07	Other Amount Due Under Policy Terms (3)
IN04	Proceeds from Matured Policies, Endowments or Annuities (3)	IN08	Agent Credit Balances (3)
		IN99	Aggregate Insurance Property Under \$50.00 (3)

Individual Retirement Accounts

IR01	Traditional IRA - Cash (3)	IR05	Roth IRA - Cash (3)
IR02	Traditional IRA - Mutual Funds (3)	IR06	Roth IRA - Mutual Funds (3)
IR03	Traditional IRA - Securities (3)	IR07	Roth IRA - Securities (3)

NAUPA Property Type Codes



Proceeds From Mineral Interests

MI01	Net Revenue Interest (3)	MI06	Bonuses (3)
MI02	Royalties (3)	MI07	Delay Rentals (3)
MI03	Overriding Royalties (3)	MI08	Shut-In Royalties (3)
MI04	Production Payments (3)	MI09	Minimum Royalties (3)
MI05	Working Interest (3)	MI99	Aggregate Mineral Interests Under \$50.00 (3)

General Business, Miscellaneous Checks and Intangible Personal Property

MS01	Wages, Payroll, Salary (1)	MS12	Unredeemed Gift Certificates (5)
MS02	Commissions (1)	MS13	Unclaimed Loan Collateral (3)
MS03	Workers' Compensation Benefits (3)	MS14	Pension & Profit Share Plans (IRA, Keogh) (3)
MS04	Payment for Goods & Services (3)	MS15	Dissolution or Liquidation (1)
MS05	Customer Overpayments (3)	MS16	Misc Outstanding Checks (3)
MS06	Unidentified Remittances (3)	MS17	Misc Intangible Prop (3)
MS07	Unrefunded Overcharges(3)	MS18	Suspense Liabilities (3)
MS08	Accounts Payable (3)	MS19	Credit Memos (3)
MS09	Credit Balances - Accts. Rec. (3)	MS20	Expense Checks (3)
MS10	Discounts Due (3)	MS99	Aggregate Misc Property Under \$50.00 (3)
MS11	Refunds Due (3)		

Securities

SC01	Dividends (3)	SC12	Underlying Shares or Other Outstanding Certificates (3)
SC02	Interest (Bond Coupons) (3)	SC13	Funds for Liquidation/Redemption of Unsurrendered Stock or Bonds (3)
SC03	Principal Payments (3)	SC14	Debentures (3)
SC04	Equity Payments (3)	SC15	US Govt Securities (1)
SC05	Profits from Stock/Bonds (3)	SC16	Mutual Fund Shares (3)
SC06	Funds PD to Purchase Shares (3)	SC17	Warrants (Rights) (3)
SC07	Funds for Stocks & Bonds (3)	SC18	Matured Bond Principal (3)
SC08	Shares of Stock (Returned by Post Office) (3)	SC19	Dividend Reinvestment Plans (3)
SC09	Cash for Fractional Shares (3)	SC20	Credit Balances (3)
SC10	Unexchanged Stock of Successor Corp (3)	SC99	Aggregate Security Related Cash Under \$50.00 (3)
SC11	Other Cert of Ownership (3)		

Safe Deposit Boxes and Safekeeping

SD01	SD Box Contents (4)	SD06	Cash Only From SD Box (2)
SD02	Other Safekeeping (2)	SD80	Funds from Sale of SD Box Contents (1)
SD03	Other Tangible Property (2)	SD81	Funds from Sale of Self Storage (4)

Trust, Investments and Escrow Accounts

TR01	Paying Agent Accounts (3)	TR05	Trust Vouchers (3)
TR02	Undelivered or Uncashed Dividends (3)	TR06	Pre-Need Funeral Plans (3)
TR03	Funds Held In Fiduciary Capacity (3)	TR99	Aggregate Trust Property Under \$50.00 (3)
TR04	Escrow Accounts (3)		

Utilities

UT01	Utility Deposits (1)	UT04	Capital Credit Distributions (1)
UT02	Utility Membership Fees (3)	UT99	Aggregate Utility Property Under \$50.00 (1)
UT03	Utility Refunds or Rebates (1)		

Gift Certificates/Gift Cards

Important Aspects of Tennessee's Gift Certificate Laws

Tennessee Code Annotated, Section 66-29- 102(9): Unclaimed Property Law

The gift card/gift certificate may be exempted if:

- The value does not expire
- Decreases in value only by redemption of merchandise, goods or services
- Unless required by law, must not be redeemed for or converted into money

If a gift card/gift certificate does not meet the above requirements:

- Not exempt
- 5 year dormancy

Tennessee Code Annotated, Section 47-18- 127: Consumer Protection Act

This law was effective as of July 1, 2006.

- Gift certificate may NOT have an expiration date less than two years
- May NOT charge fee to issue gift certificate
- May NOT charge fees within the first two years
- If there is no expiration date on the gift certificate, then is valid until redeemed or replaced with new gift certificate

Exemptions:

- Given as an award, loyalty or promotional program without any money or anything of value in exchange
- Sold below face value to employers, nonprofit or charitable organizations or fundraising purposes
- Sold by a nonprofit or charitable organization for fundraising purposes
- Given to employee to be limited to the employer's business establishment
- Useable with multiple, unaffiliated sellers of goods or services
- Given to employee in recognition of services performed
- Does not include prepaid calling cards

Cashier's Checks

Includes Certified Checks and Money Orders

- Typically, we receive the funds from these instruments from financial institutions.
- There will be a remitter (purchaser) and payee for each check.
- We must receive as much information as possible for both the remitter and the payee.
- Due to the nature of this instrument, the state will not know if the correct owner of these funds belongs to the remitter or payee. If both names are not provided, the state will have to contact you back. To avoid extra work later, please provide all necessary information to help us pay the correct owner.

Traveler's Checks

- Due to the nature of these instruments, the owner will not be known at the time the funds are turned over to the state.
- Typically, the institution that issued these checks will claim the funds back from the state when the original traveler's check has been cashed.
- These items may no longer be reported in the aggregate. We must receive the serial number and amount for each traveler's check in the proper NAUPA file format.
- Our ability to reimburse you will depend on your compliance with reporting these funds.



STATE OF TENNESSEE • TREASURY DEPARTMENT
Unclaimed Property Division
P.O. Box 198649 • Nashville, Tennessee 37219-8649 • (615) 253-5362
www.treasury.tn.gov

PENALTY CALCULATION SHEET

The purpose of this form is to facilitate the calculations of penalty provided by law. Penalties are assessed in addition to property due to missing owners. You may be requested to complete this form if your report arrives after the due date of November 1.

Tennessee Code Annotated, Section 66-29-173 addresses failure to perform reporting duties, which includes failure to report, pay or deliver property within the time prescribe by statute.

PART I Penalty for Failure to Perform Reporting Duties

- | | |
|--|---------|
| 1 Enter number of days not reported _____ x \$200 per day. | 1 _____ |
| OR | |
| 2 The cumulative maximum amount of \$5,000.00 | 2 _____ |
| 3 Enter the lesser of line 1 or 2. | 3 _____ |
| (Pay this amount separate from your report filing.) | |

Tennessee Code Annotated, Section 66-29-174 addresses contracting to avoid payment and filing a fraudulent report.

PART II Penalty for Contracting to avoid obligations under the Act or Filing a Fraudulent Report

- | | |
|--|---------|
| 1 Enter number of days not reported _____ x \$1,000 per day. | 1 _____ |
| OR | |
| 2 The cumulative maximum amount of \$25,000.00 | 2 _____ |
| 3 Value of Property to be reported _____ x 25%. | 3 _____ |
| 4 Add the lesser of line 1 or 2 and add amount to line 3. | 4 _____ |
| (Pay this amount separate from your report filing.) | |

Safe Deposit Box Contents

- Unlike your required annual report, safe deposit box contents or other tangible items are NOT remitted to the Division of Unclaimed Property at the time the report is filed. (See Tennessee Code Annotated, Section 45-2-907.) **Please be aware 45-2-907 has not been updated to reflect Unclaimed Property's current filing deadline of Nov 1, effective 4/24/2018.*
- Your initial Safe Deposit Box report must be in an electronic NAUPA file. It should be included with your annual report.
- Once we receive your initial report, we will attempt to locate the missing owners. If we are successful, we will have them contact you. This will allow you to collect any unpaid rent or drilling fees prior to turning over the contents of the safe deposit box.
- After a minimum of one (1) filing year, when the Division of Unclaimed Property received your initial report of safe deposit box contents, you may dispose or auction the contents.
- Any additional funds due the owner are reportable to the Division of Unclaimed Property in your disposition report within 60 days of sale. (See Tennessee Code Annotated, Section 45-2-907 for applicable fees and charges that may be deducted.)
- You must use the unique paper report for the final disposition of safe deposit box contents. The report and funds are required to be remitted to the Division of Unclaimed Property.

You can download the safe deposit box disposition form at:

<https://treasury.tn.gov/Reporting> - "under Forms and Guides",
"under Additional Forms", SDB Disposition Form

For additional information regarding the reporting of safe deposit box contents, please review Tennessee Code Annotated, Section 45-2-907.



Report Checklist



- ☐ Follow the instructions on our website to send your NAUPA file through the reporting website "Report It TN".
- ☐ Include all social security numbers for property owners being reported. Cross reference any other internal databases, if needed.
- ☐ All ACH payments must be made online through, "Report It TN".
- ☐ Wait 60 days after you send out due diligence letters before reporting. Pay any owners who come forward within the 60 days and adjust report accordingly.

Securities Checklist



- ☐ Transfer all stock DTC or DWAC. We will return physical certificates that are DTC eligible.
- ☐ We do not accept book entry accounts. Convert and send DTC or DWAC.
- ☐ Use correct registration for stock, mutual funds and physicals.
- ☐ Set all distributions or dividends to cash.
- ☐ DO NOT transfer securities into our account until you are ready to remit the report.
- ☐ Send statements to Avenu and the State of Tennessee.
- ☐ See our website for frequently asked questions regarding securities.

ORDERS OF PROTECTION

ORDERS OF PROTECTION
Taken from a PowerPoint Presentation
by Robin Kimbrough

1. State Policy on Domestic Violence (T.C.A. 36-3-618)

- Recognize the seriousness of domestic abuse as a crime to ensure that the law provides a victim of domestic abuse protection from domestic abuse
- Recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers
- Official response shall stress enforcing laws to protect the victim and prevent further harm to the victim, and the official response shall communicate the attitude that violent behavior is not excused tolerated

2. What Court Can Issue an Order of Protection?

- Any court of record with jurisdiction over domestic relation matters or the General Sessions Court of the county – All other counties

3. Is the Clerk's Office a Court? T.C.A. 36-3-601 (3)(D)

- **YES**, "Court" also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a Judge for purposes of issuing ex parte orders of protection when a Judge of one of the courts listed in subdivisions (3)(A), (3)(B) or (3)(C) is not available

4. Who can be a petitioner? T.C.A. 36-3-601 (5)(10)(11)

- Domestic Abuse Victim
 - Adults or minors who are current or former spouses;
 - Adults or minors who live together or who have lived together;
 - Adults or minors who are dating or who have dated or who have or had a sexual relationship. As used herein, "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context.
 - Adults or minors related by blood or adoption;
 - Adults or minors who are related or were formerly related by marriage, or
 - Adult or minor children of a person in a relationship that is described in subdivisions (5)(A)-(E);
- **Sexual Assault** Victim (no relationship requirement)
- **Stalking** Victim (no relationship requirement)

5. Who can file for the order of protection? (T.C.A. 36-3-602(b))

- A person over the age of 18 (Adult)

- The parent of unemancipated minor on behalf of the minor
 - An advocate from a domestic violence, sexual assault, or a child advocacy center on behalf of unemancipated minor
 - A Guardian Ad Litem
 - The Department of Children's Services
- 6. Who can be a respondent? (T.C.A. 36-3-602(a))**
- Any person who a petitioner has alleged committed domestic violence, stalking, or sexual assault
 - This includes minors. You would also need to serve the parents of a minor as well.
- 7. What County? (T.C.A. 36-3-602(c))**
- Venue for a petition for an order of protection, and all other matters relating to orders of protection shall be
 - in the county where the respondent resides or
 - the county in which the domestic abuse, stalking or sexual assault occurred.
 - If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.
- 8. No Requirements for filing Orders of Protection**
- There is no statute of limitations to file an order of protection.
 - Police reports are not required to file an order of protection.
 - Setting or requiring fees is not required to file for the order of protection.
- 9. Standing and Filings Best Practice Tips**
- You should not have to determine the relationship with requirement if you do not issue the ex parte orders of protection.
 - Make sure that the petition is filed in the proper county.
 - Don't create extra hurdles for victims by requiring upfront fees, settling costs, or police reports to file the order of protection.
- 10. Forms (T.C.A. 36-3-604) (1)**
- The office of the clerk of court shall provide forms that may be necessary to seek a protection order under this part.
 - The clerk may obtain the most current forms by printing them from the web site of the administrative office of the courts <http://www.tncourts.gov/forms-publications>
 - Orders of Protection Forms promulgated by the Administrative Office of the Courts SHALL be used exclusively in all courts exercising jurisdiction over orders of protection.
- 11. Forms (T.C.A. 36-3-604) (2)**
- The office of the clerk shall also assist a person who is not represented by counsel by filling in 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 assistance that is necessary for the filing of the petition.

- All such petitions that are filed pro se shall be liberally construed procedurally in favor of the petitioner.

12. Forms - Best Practice Tips

- Obtain the most current forms by printing them from the website of the administrative office of the courts. <http://www.tncourts.gov/forms-publications>
- If a petitioner does not provide you with an Administrative of the Courts promulgated form, you must file the pleading in whatever form provided.

13. Order of Protection Filing Fees T.C.A 36-3-617

- This statute provides that no victim shall be required to bear the costs associated with an ex parte order of protection, or a petition for an order, whether issued inside or outside the state, including the following costs:
 - Filing
 - Issuance
 - Registration
 - Service
 - Dismissal
 - Nonsuit
 - Appeal
- To access costs there has to be 2 findings:
 1. Person assessed to is not a victim
 2. Petitioner was untruthful

14. Order of Protection Filing Fees - Best Practice Tips

- Do not charge a fee for a petition to the court for any action on an order of protection. This includes making copies of the order of protection.
- Look at the order to make sure that the Judge has assessed fees
- You cannot deny any petitioner from filing an order of protection even if there are outstanding fees. This means the clerk cannot require the petitioner to pay off any fees to file the order of protection.

15. Service

- 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 upon the respondent at least (5) days prior to such hearing. An ex parte order issued pursuant to this part shall be PERSONALLY served upon the respondent.

- If the respondent is not a resident of Tennessee, the ex parte order shall be served pursuant to T.C.A. 20-2-215 and 20-2-216. Such notice shall advise the respondent that the respondent may be represented by counsel.
- In every case, unless the court finds that the action would create a threat of serious harm to the minor, when a petitioner is under hearing and any ex parte order of protection shall also be served on the parents of the minor child, or in the event that the parents are not living together and jointly caring for the child, upon the primary residential parent.

16. Service - Best Practice Tips

- In the case of an order of protection against a minor, the best practice is to serve the minor and the parent or legal guardian of the minor
- Make sure service has been had on the respondent.

17. Ex Parte Orders

- Orders issued without notice to Respondent
- Ex parte orders stay in effect until the time of the hearing on the matter. (T.C.A. 36-3-605)
- If the ex parte order is dismissed, the Judge must hear the pending petition.

18. Ex Parte Orders/Determining Immediate Danger or Harm (T.C.A. 36-3-605)

- If you are responsible for issuing the order of protection, you should consider these factors to determine immediate danger or harm:
 - A history of violence;
 - Respondent's pattern of conduct;
 - Petitioner's injuries;
 - Petitioner's fear of retaliation;
 - Respondent's access to weapons;
 - Respondent's history of stalking;
 - Respondent's criminal record;
 - Respondent's use of drugs or alcohol;
 - Respondent's threats of suicide;
 - Respondent's history of mental illness;
 - Threats to attack the petitioner, the children, or other family members;
 - Threats to animals (pets).
 - Threats or attacks on family or household members

19. Ex Parte Relief Available Under and Order of Protection

- Directing the respondent to refrain from committing or threatening additional acts of abuse, including domestic abuse, sexual assault, and stalking against the petitioner and the minor children.
- Prohibiting the defendant from coming about the petitioner for any purpose, from telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly.

- Ordering the respondent to leave the shared residence while the order of protection.
- 20. Enforcement of Orders of Protection**
- Order of Protection are effective for a fixed period of time, not to exceed one year.
 - The petitioner has the right to request relief if the respondent has violated the ex parte order of protection or the final order of protection, and such request can be made through filings with the clerk's office.
 - If the respondent is convicted of violating the final order of protection, the Court shall set a financial penalty bond, which is paid to the clerk's office.
- 21. Ex Parte Orders Best Practice Tips**
- If the Judge denies the ex parte order, check to make sure a hearing has been set on the petition.
 - If issuing, make sure the petitioner knows to make additional copies.
 - Check boxes on the form.
- 22. Enforcement of Orders of Protection**
- A Civil Contempt/Criminal Contempt. (T.C.A. 36-3-610)
 - Class A Misdemeanor (T.C.A. 39-13-113)
 - Extensions of the order of protection for 5 years upon a first violation and 10 years upon a second or subsequent violation. (T.C.A. 36-3-605)
 - Assessment of a Financial Penalty. (T.C.A. 36-3-610)
- 23. What fees should the clerk collect T.C.A. 36-3-610**
- A fifty dollar fine related to the violation of the order of protection.
 - A financial penalty bond related to the violation of the order of protection.
- 24. The fifty-dollar (\$50) Fine T.C.A. 36-3-610(1)**
- A person who violates an order of protection must pay a \$50 fine related to the violation of the order protection.
 - The clerk must send these collected fines, on a monthly basis, to the state treasurer who must deposit it in the domestic violence community fund.
- 25. Financial Penalty Bond-1 T.C.A. 36-3-610 (b)(2)**
- Mandates that a Judge set a bond on a respondent who has been convicted of violating an order of protection or court approved consent order.
- 26. Financial Penalty Bond-2**
- The bond must be at least \$2500, but the court can set a reasonable amount greater than \$2500 to assure the safety of the petitioner. If the respondent does not post the bond, the respondent may be held in contempt of court.
- 27. Financial Penalty Bond-3**
- If the respondent fails to comply with the bond requirements, the court must enter an order declaring the bond forfeited.

- The forfeited bond funds go to: Legal Aid, TALS, DVSCC, CASA, and Childhelp.

28. Enforcement Best Practice Tip

- Remember that the petitioner has the right to request relief if the respondent has violated the ex parte order of protection or the final order of protection, and such request can be made through filings with the clerk's office.
- Collect fines related to the violation of the order of protection
- Make sure fines are turned over to the proper agencies after collection.

30. Orders of Protection and Vulnerable Adults

- This new law permits a relative to file an order of protection on behalf of an "adult" as defined under the Adult Protection Act T.C.A. 71-6-101, who is the victim of willful abuse, neglect or exploitation (T.C.A. 71-6-117). This could include financial abuse.
- Another adult has to have personal knowledge.

31. Who is a relative?

- The relative filing the petition must be a spouse, child, including stepchild, adopted child or foster child; parents (stepparents, adoptive parents or foster parents); siblings of the whole or half-blood; step-siblings, grandparents, grandchildren, of any degree, and aunts, uncles, nieces and nephews.

32. How long does it last?

At the time of the hearing, if the Judge finds by a preponderance of the evidence that the allegations are true, then the court may issue an order of protection for a definite period of time not to exceed 120 days. The court has the discretion to appoint a guardian ad litem under T.C.A. 34-1-107.

33. What can the Judge order?

- Order the respondent to refrain from committing a violation of this part against the adult, T.C.A. 71-6-117.
- Refrain from threatening to misappropriate or further misappropriating any monies, state or federal benefits, retirement funds or any other personal or real property belonging to the adult.
- Order the return to the adult or the adult's caretaker or conservator or to the fiduciary any monies or benefits misappropriated from the adult.
- The court may also enter a judgment against the respondent for repayment.

34. What can the Judge order?

- If the amount in question exceeds ten thousand dollars, the court may require the caretaker or custodian of funds appointed under this subsection to post a bond
- Enjoin the respondent from providing care for an adult on a temporary or permanent basis;

- Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly, and any other necessary relief to protect the adult.

35. What are the penalties for violating the order?

- There is a misdemeanor in the law for a violation. Additionally, any violation can be treated like an order of protection issued under the Order of Protection Act. This would include contempt (T.C.A. 36-3-610) and the violation of the order of protection (T.C.A. 39-13-113). The Tennessee firearms prohibition may apply depending on the relationship between the respondent and the adult.

36. Vulnerable Adult Orders of Protection - Best Practice Tips

- Use the forms promulgated by the AOC.
- Treat the petition and the issuing of the ex parte order just if it were one requested by a competent adult.

37. Extensions of Order of Protections

- Orders of Protection are ordered for a definite period of time not to exceed one (1) year. However, orders can be extended upon motion for an additional year.
- An order of protection can be extended if there is a conviction of a violation for up to five (5) years or ten (10) years on the second or subsequent violation.

38. Extensions of Order of Protections – Best Practices

- If a divorce complaint is filed, the order of protection shall remain in effect until the court in which the divorce action lies modifies or dissolves the order. (T.C.A. 36-3-603)
- If the defendant is convicted of an order of protection violation, the order can be extended upon the petitioner's motion or the Judge's own motion. (T.C.A. 36-3-605(d))

39. Full Faith and Credit – Orders of Protection

- An order of protection issued pursuant to this part shall be valid and enforceable in any county of the state.
- Any valid order of protection from another state shall be afforded full faith and credit.
- For foreign orders to be valid, the respondent must have had notice and an opportunity to be heard.
- Regardless of whether a foreign order of protection has been filed in this state pursuant to this section, a law enforcement officer may rely upon a copy of any such protection order and may also rely upon the statement of any person protected by the order that the order remains in effect.
- Mutual orders shall not be enforceable against the petitioner unless the respondent filed a cross or counter petition, and the court made specific findings against the petitioner.

40. Full Faith and Credit Best Practice Tip

- Treat like out-of-state orders of protections as if they were issued in Tennessee.
- Remember the foreign order does not have to be registered for it to be enforceable in Tennessee.

41. Appeals

- If the respondent appeals the grant of the order of protection, the order of protection remains in effect until further findings have been made on the order.

PROBATE

TABLE OF CONTENTS FOR PROBATE GUIDE

CHAPTER 1-INTRODUCTION-----	1
CHAPTER 2-ADMISSION OF WILL TO PROBATE-----	4
CHAPTER 3-WILL CONTEST-----	11
CHAPTER 4-LETTERS AND BOND-----	13
CHAPTER 5-ELECTIVE SHARE, ETC -----	15
CHAPTER 6-INTESTACY -----	19
CHAPTER 7-INVENTORY OF ESTATE -----	22
CHAPTER 8-INSOLVENT ESTATES-----	23
CHAPTER 9-CLAIMS-----	25
CHAPTER 10-DISTRIBUTION -----	32
CHAPTER 11-ACCOUNTINGS AND SETTLEMENT-----	34
CHAPTER 12-SMALL ESTATES-----	39
CHAPTER 13-ADMITTING FOREIGN WILL FOR A MUNIMENT OF TITLE-----	43
CHAPTER 14-ADMITTING WILL SOLELY AS A MUNIMENT OF TITLE-----	44
CHAPTER 15-RE OPENING AND CLOSING AN ESTATE-----	45
CHAPTER 16-ESTABLISHING LOST OR SPOLIATED WILLS-----	46
CHAPTER 17-SALE OF REAL ESTATE IN DECEDENT'S ESTATE-----	47
CHAPTER 18-TENNCARE REQUIREMENT IN PROBATE-----	49
CHAPTER 19-MISCELLANEOUS PROVISIONS-----	51
CHAPTER 20-DISPOSAL OF DORMANT CASES-----	54
USEFUL PROBATES STATUTES-----	55
FORMS-----	57-68

CHAPTER ONE

INTRODUCTION

The Probate Court

The jurisdiction over the probate of wills and administration of estates is now vested in the Chancery Court unless a particular county has a special court for probate created by private act. See T.C.A. 16-16-201. Probate jurisdiction has been vested in General Sessions Court in several counties by private act. Under this law, where the Chancery Court exercises primary jurisdiction of probate matters, the Clerk and Master may perform many of the functions formerly reserved to the County Judge, subject to the review and approval of the Chancellor, as well as those duties formerly performed by the County Clerk when acting as clerk of the Probate Court for a County Judge or Probate Judge. Therefore, when the term “clerk” is used hereafter, it shall refer to the County Clerk, Clerk and Master, probate clerk or any clerk exercising probate jurisdiction. However, because of the additional duties placed on the Clerk and Master when the Chancery Court exercises probate jurisdiction, specific reference to the Clerk and Master will often be necessary. Similarly, the term “judge” shall refer to judges having probate jurisdiction. The term “court” shall refer to the court exercising probate jurisdiction.

As noted earlier, the Clerk and Master may perform some duties for the Chancellor that other clerks could not perform for the county judge. Where the Chancery Court has probate jurisdiction, the Clerk and Master may “grant letters of administration and letters testamentary . . ., appoint administrators and executors . . ., receive and adjudicate all claims, probate wills in common form, determine allowances to the surviving spouse and family of the deceased, preside over the assignment of homestead, take and state all accounts and settlements, subject to the approval of the Chancellor, direct and approve final distributions, and hear and determine all probate matters whether herein enumerated or not.” (T.C.A. 16-16-201)

The court exercising probate jurisdiction of the county in which the decedent usually resided (was domiciled) at the time of his or her death has jurisdiction over the estate. However, if the deceased had fixed residences in more than one county in Tennessee, then either county’s court exercising probate jurisdiction has jurisdiction (T.C.A. 30-1-102.) Also, if the decedent owned real estate situated in another state, then that state will have ancillary jurisdiction to administer that state’s real estate. A finding of domicile by the Probate Court of one state is not binding upon the courts of another state, and each court finding domicile in that court’s state may administer the real and personal property within its own state.

Letters testamentary or of administration may be granted upon the estate of a person who resided, at the time of his death, in some other state or territory of the union, or in a foreign country, by the Probate Court of any county in this state:

1. Where the deceased had any goods, chattels, or assets, or any estate, real or personal, at the time of his death, or where the same may be at the time when said letters are applied for;
 2. Where any debtor of the deceased resides;
 3. Where any debtor of a debtor of the deceased resides, his debt being unpaid when the application is made;
 4. Where any suit is to be brought, prosecuted, or defended, in which said estate is interested.
- (T.C.A. 30-1-103)

Overview of the Testate and Intestate Estate

Upon the death of a person, the real and personal property of the decedent must be distributed according to law. This law is basically the Tennessee statutory law found in Tennessee Code Annotated. When a person has made a valid will before death, then that person is said to have died testate or with a will. When a person dies without having made a valid will, then that person is said to have died intestate or without a will. Sometimes a person dies leaving a will that does not deal with all of the decedent's property. In this case, the person dies intestate in regard to the property not passing by will. This guide will first deal with the situation involving decedents that have left a will, but will also review the procedure involved in intestacy. In many aspects, the administration is similar.

Certainly, many advantages are secured through probate administration, such as clear vesting of legal title where real estate is devised by will. Some estates where the value of property in the estate is under \$50,000.00 may be administered in a shortened manner under the Small Estates Act. (T.C.A. 30-4-101 et seq.) Administration is always necessary if one or more of the heirs is a minor, or if some of the heirs demand administration, or if there is a dispute among the heirs.

Sample Guidelines for an Estate:

1. Determine if the decedent left a will and if so, the original will be needed for probate.
2. Determine if the will is self proving or authenticating, which means it has an affidavit attached to the will that was executed at the same time the will was executed. If the will is not self proving, it will need to be proven by affidavit or testimony of one witness.
3. To open a probate in:
 - a. Common form, you will need a petition that contains all the information outlined in TCA 30-1-117, an order of probate, and the original will.
 - b. Solemn form, you will need a petition that contains all the information outlined in TCA 30-1-117, and a summons/notice that will need to be served on all beneficiaries and/or heirs at law. The Clerk should file and issue the documents and set this for a court hearing. Following the hearing an order should be entered

detailing the outcome of the hearing for probate in solemn form.

4. The clerk is required to send a notice to the Commissioner of Revenue only on estates where the decedent died prior on or before December 31, 2015 (however, the Department of Revenue has indicated that they do not want any forms sent in as they no longer process those forms,) issue Letters of Testamentary with a will and Letters of Administration without a will. (If a request is made to probate a will contrary to the specific directions in the will, the Clerk should issue Letters of Administration CTA, or with-the-will-annexed, and Notice to Creditors, the decedent's estate is being probated within a year from their date of death.

The clerk should collect the filing fee at the initiation of the estate. If bond is required, it should be received prior to the issuance of Letters.

5. File all documents relative to that estate until closure is ready. The clerk may request an affidavit from the representative or the attorney representing the estate, stating that actual notice to creditors has been given to all known creditors and the date received by such creditor, so that the clerk will know when an estate can be closed.
6. Closing documents required are:
 - a. release from the Bureau of TennCare on deceased individuals over the age of 55;

- b. a sworn statement that actual notice to creditors has been given by the personal representative to all known creditors when probate occurred within a year from death;
- c. proof that all claims filed against the estate have been satisfied and/or released;
- d. a release from each beneficiary or heir, sworn to or signed under penalty of perjury, or
- e. set the closure for hearing and make sure all heirs or beneficiaries have been notified by the attorney or the representative;
- f. a detailed accounting, unless waived by the will and/or by all the heirs, which is supported by legal vouchers. Or in the alternative, a motion or petition to close or a statement in lieu of settlement; and
- g. an order to close the estate.

CHAPTER TWO

ADMISSION TO PROBATE

In Tennessee, any person of sound mind eighteen (18) years old or older may make a will in accordance with statutory requirements for validity. (T.C.A. 32-1-102) Strict compliance with the statutory requirements must be shown to a court. These strict requirements help to guard against fraudulent transfer of property by purported will.

The process of proving a will in court is called “probate.” The court which takes the proof is the “probate court.” The person leaving a will is called a “testator.”

When a will is presented to the court, either through a judge or clerk, the person presenting the will may simply produce the document to the judge (or Clerk and Master) and move that it be admitted to probate. The judge (or Clerk and Master) then presides over the presentation of the proof and orders admission to, or denial of, probate and grants or denies the application for letters testamentary.

In many cases additional information will be helpful to the judge and the clerk, and a petition may contain other information, and an oath of the truth of the statements in the petition.

Time Limitations on Probate

Although there is no time limitation on the probate of wills generally, letters testamentary (or of administration) should not be granted after ten years of the date of the decedent’s death, as these would be considered by the law to be void and of no effect. However, there are three exceptions to this rule:

1. Where a person dies, entitled to a vested or contingent remainder, not reduced to possession in his/her lifetime, for ten years after the termination of the life or other particular/estate on which the remainder depends, letters shall be given to administer upon the estate in said remainder.
2. If a person entitled to distribution was an infant when the deceased died, then, letters may be granted at any time within twenty-two years from the date of death.
3. Also, a special administration may be granted for the purpose of prosecuting any claim against the government of the United States without any limitation on time. (T.C.A. 30-1-110)

Who Presents the Will or Wills?

Any “interested person” may present the will for probate. If more than one will exist, both wills should be presented. Corrupt destruction or concealment of a will with intent to prevent probate or to defraud is a felony punishable by imprisonment. (T.C.A. 32-14-131, 40-35-111)

Renunciation by Devisee- A person who is entitled to take property under a testamentary instrument may renounce in whole or in part the succession to any property or interest passing by the will.

Declination to Serve - Any named executor in a decedent’s last will and testament may decline to serve as such personal representative by filing a sworn statement, or a statement under penalty of perjury, with the court (T.C.A. 30-1-112.)

Execution of Will and Witnesses

- a. Will other than holographic or nuncupative is governed by statute (T.C.A. 32-1-104), it must bear the signature of the testator and of at least two (2) witnesses as follows:
 - (1) The testator shall signify to the attesting witnesses that the instrument is the testator's last will and either:
 - (A) The testator sign;
 - (B) Acknowledge the testator's signature already made; or
 - (C) At the testator's direction and in the testator's, presence have someone else sign the testator's name; and
 - (D) In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses.
 - (2) The attesting must sign:
 - (A) In the presence of the testator; and
 - (B) In the presence of each other.
- b. For wills executed prior to July 1, 2016, to the extent necessary for the will to be validly executed, witnesses' signatures affixed to an affidavit meeting the requirements of T.C.A. 32-2-110 shall be considered signatures to the will, provided that:
 - (1) The signatures are made at the same time as the testator signs the will and are made in accordance with subsection (a); and
 - (2) The affidavit contains language meeting all the requirements of subsection (a). If the witnesses signed the affidavit on the same day that the testator signed the will, it shall be presumed that the witnesses and the testator signed at the same time, unless rebutted by clear and convincing evidence. If pursuant to this subsection (b), witness signatures on the affidavit are treated as signatures on the will, the affidavit shall not also serve as a self-proving affidavit under T.C.A. 32-2-110. Nothing under this section shall affect, eliminate, or relax the requirement in subsection (a) that the testator sign the will.

Holographic Wills: No witness to a holographic will is necessary, but the signature and all its material provisions must be in the handwriting of the testator and the testator's handwriting must be proved by two (2) witnesses. (T.C.A. 32-1-105)

Nuncupative Will: Nuncupative (oral) will may be made only by a person in imminent peril of death, whether from illness or otherwise, and shall be valid only if the testator died as a result of the impending peril, and must be:

- (1) Declared to be the testator's will by the testator before two (2) disinterested witnesses;
- (2) Reduced to writing by or under the direction of one (1) of the witnesses within thirty (30) days after such declaration; and
- (3) Be submitted for probate within six (6) months after the death of the testator.

A nuncupative will may dispose of personal property only and to an aggregate value not exceeding \$1,000.00, except that in the case of persons in active military, air or naval service in time of war the aggregate amount may be \$10,000.00 and a nuncupative will neither revokes nor changes an existing written will. (T.C.A. 39-1-106)

Foreign Execution of Will

A will executed outside this state in either: the manner prescribed by the law of this state, or the manner prescribed by the law of the place of its execution, or the manner prescribed by the law of the testator's domicile at the time of its execution, shall have the same force and effect in this state as if executed in compliance with the execution requirements of this state. (T.C.A. 32-1-107,)

Non-Resident Estate Fiduciaries shall not act in any capacity until it has appointed in writing the secretary of state as its agent for service of process pursuant to T.C.A. 35-50-107 (b)(2).

Common Form Probate

No formality is required in proving a will in common form. Usually, the will is presented to the judge, or Clerk and Master, and motion is made that it be admitted to probate. The clerk will make a minute entry of the motion.

The judge, or Clerk and Master, will then hear the required proof (see "Sufficiency of the Will" below). No one can object to this proof except by intervening as a contestant (see "Contest" below). The proof must meet the statutory requirements.

If the judge finds the will to be not proved, he denies probate. If he finds it to be proved, he orders it admitted to probate and may order letters testamentary granted if they are applied for.

The personal representative, executor or executrix, then administers the estate.

Solemn Form Probate

Solemn form probate will be used where the will is nuncupative in every case, or where the person presenting the will desires to either resolve any possible objections or else desires to force any objectors to make a contest.

Two main differences from common form may be noted:

1. notice and its effect, and;
2. the measure of proof required.

Notice and Its Effect

In solemn form probate, contest must be offered when the will is offered for probate or never. All persons interested must be notified of the proceedings in order to be bound by it and in order to cut off future contests. If for some reason an interested person is not notified, the proceedings are to him/her as in common form and his/her right to contest is not cut off at a later date.

Notice is by service, or in a proper case, by publication.

Time of Notice

Resident parties must be served with notice at least five days before offering the will for probate.

Non-residents must be notified by publication and the return-receipt certified or registered mail notice in accordance with statute. (Also see T.C.A. 21-1-204, 21-1-205)

Other Considerations

A guardian ad litem should usually be appointed for minors and mental incompetents, for often the minor's actual guardian is a party to the proceeding also, and a court appointment of a guardian with no "interest" in the suit will avoid a conflict of interest in the person of the guardian.

A will duly probated in another state may be admitted and recorded in any county of this state in which the testator left any estate. (T.C.A. 32-5-101)

When an authenticated copy of a will probated in another state and the probate of such will is presented by the executor or other interested person, these documents must be filed and probate may be had in either common or solemn form. If in solemn form, notice must be given for a hearing at an

appointed time as on a petition for original probate of a domestic will in common form. However, a contest of such a will as to its validity shall apply only to a devise of realty lying in Tennessee. Distribution of personal property is according to the probate of the will in the other state. (T.C.A. 32-5-103)

The court's duty is to examine the certifications and authentications. (In re: De Franceschi's Estate, 70 S.W. 2d 513, 17 Tenn. App. 673 (1933)) Proof of certification or authentication shall be sufficient by the attestation of other state's clerk and seal of the court, if a seal exists, together with a certificate of a judge of the court that the attestation is in proper form.

Upon proof of the will or a certified copy and the requirements of law being met to the satisfaction of the probate judge, probate and administration shall be held in the same manner as with all domestic wills including letters, bonds, contest, etc.

Sufficiency Of The Will

Common Form

The judge (or Clerk and Master) should look to the following to see if the will meets the requirements of due execution.

The signature of the testator should be on the will and proved.

- A. For a written will with witnesses. The law requires that a written will be subscribed by at least two witnesses who sign in the presence of each other and in the presence of the testator, and the testator must have indicated in some manner to them that the document was his/her will. (T.C.A. 32-1-104)

A witness is "interested" if the will gives to him or her some personal and beneficial interest. Unless the will is also attested by two disinterested witnesses, an interested witness can receive no more than he or she would have received had the testator died intestate and forfeits any value in excess of that intestate amount. (T.C.A. 32-1-103)

Written wills with witnesses, when not contested, shall be proved by at least one of the subscribing witnesses, if living. Every last will and testament, written or nuncupative, when contested, shall be proved by all the living witnesses, if to be found, and by such other persons as may be produced to support it. (T.C.A. 32-2-104)

Solemn Form

At the time fixed in the notice to parties, all subscribing witnesses to be found should give testimony of due execution as required by law. If more than two have subscribed, then all still should testify.

In the event no subscribing witnesses are to be found, or if the will is a holograph and there are no subscribing witnesses, then diligence is required in the search for the production of such witnesses who may testify; subpoena should issue, inquiry at residence should be made, and relatives and friends questioned as to the witness's present whereabouts. Return of subpoena and in some cases affidavit with questions and answers of inquiries may be then given in evidence. (See "Secondary Proof" below.) If the judge so allows, proof of witnesses residing outside the state or county or unable to testify in person may be taken on interrogatories or deposition.

Affidavits

In common form probate, a witness to any will may make and sign an affidavit stating therein the facts of due execution which he/she would testify to if in court proving the will. The affidavit must

be sworn to before any officer authorized to administer oaths (usually a notary public), and such officer may be in or out of Tennessee. **There should be two witnesses to the signing of the will.**

The request for affidavit may come either from the testator (i.e., when the will is made), the executor, or any person interested under the will (i.e., when the will is offered for probate). (See T.C.A. 32-2-110)

Secondary Proof

When direct evidence of due execution of a will cannot be obtained, then secondary proof may be admitted.

Proof of the signature of a witness to the will may be made by persons familiar with the handwriting of the witness, and a presumption is then made that the witness signed with due execution.

If proof of one witness's handwriting is unavailable in solemn form, then proof of the signature of one witness and that of the testator is sufficient. If no witness's handwriting can be proved, then proof of the testator's signature by two persons may be sufficient.

If common law or statutes of other states are relied on, the court shall take judicial notice of them. If adverse parties exist, reasonable notice must be given if a party requests the court to take judicial notice of any other types of law. (Tenn. R. Evid. 202)

Construction of Will

Any court of record having probate jurisdiction has concurrent jurisdiction with Chancery Court for the construction or interpretation of wills, or parts thereof, and for establishing lost, spoliated, or suppressed wills. (T.C.A. 32-3-109)

The probate judge should admit a will to probate if the sufficiency of the execution is proven. Any relief from uncertainty of meaning must be sought in chancery or any court of record having probate jurisdiction. Any "interested" person may file a suit asking for a judicial construction of the provisions of the will. No breach of duty nor wrong doing need be in question for a construction to be sought.

All verified or sworn petitions to open estates or admit wills to probate shall include the following, as required by T.C.A. 30-1-117(a)

- . **The identity of petitioner(s) including name, age, relationship and mailing address.**
- . **The decedent's name, age (if known), date and place of death, and residence at date of death.**
- . **A copy of the document(s) offered for probate attached as an exhibit to the petition.**
- . **A statement that the decedent died intestate or the date of execution of the document(s) offered for probate (if known) and the names of all attesting witnesses of the document(s) offered for probate.**
- . **If the decedent died intestate, the name, age (if known), mailing address, and relationship of each heir at law.**

- . **If the decedent died testate, the names, relationships, and city of residence of the devisees and legatees and those who would otherwise be entitled to the decedent's property under the laws of intestate succession.**
- . **The identification of any heirs of beneficiaries who are minors or are under a disability.**
- . **Unless bond is waived by the document offered for probate or in writing by all interested parties as authorized by statute, an estimate of the fair market value of the non-real estate assets.**
- . **Whether the document offered for probate waives the filing of any inventory and accounting as required by statute or whether such is not otherwise required by law.**
- . **A statement that the petitioner is not aware of any instrument revoking any document being offered for probate, and that the petitioner believes the document being offered for probate is the decedent's last will.**
 - **A statement of any felony or misdemeanor convictions and sentences of imprisonment in a penitentiary.**
 - **A statement identifying if the decedent was the owner of or had a controlling interest in any ongoing business or economic enterprise that is or may be a part of the estate to be administered, and, if so, the names and addresses of all such ongoing business or economic enterprises.**

(If the petitioner is unable to truthfully make any statement or if the statement is qualified, a full explanation should be furnished. Notice is only required in solemn form probate.)

CHAPTER THREE

WILL CONTESTS

Only persons who would be entitled to benefit by sharing in the real or personal estate of the deceased if there were no will, or if a prior will were revived, are entitled to contest the will. It is the person's personal right; it may not be assigned; nor is it necessary that he/she unite with others. The person must show his/her "interest" as if there were no will and thus prove his/her right to contest. However, the clerk has no discretion in accepting a will contest and must file or record whatever notice is given.

Jurisdiction

Any court of record that has probate jurisdiction has concurrent jurisdiction with Circuit Court to try a will contest. (See T.C.A. 32-4-109).

Certificate of Contest

The contestant shall, in the notice of contest, elect the trial court the contest will be certified to. (See T.C.A. 32-4-109). (Local rules and practice may apply).

Bond

If the right to contest the will is sustained, then the court must require the contestant to enter into a bond in the amount of \$500.00, see T.C.A. 32-4-101(a)(1). If a legatee or devisee be an adult and have notice that the probate is contested, then he/she must give a \$500.00 bond. (T.C.A. 32-4-102(a)(1)).

If because of poverty, a contestant, devisee, or legatee is unable to bear the expense of the litigation, then he/she may complete the pauper's oath. Pursuant to T.C.A. 20-12-127, the person must be a resident of Tennessee and must complete the Uniform Civil Affidavit of Indigency promulgated in Rule 29, Tennessee Supreme Court Rules.

Contest Before Probate In Common Form

When the will is offered for probate, the person desiring to contest makes known his/her desire. The person contesting the will need not have given notice. However, if interested persons were cited into court on a probate in solemn form, the contest must be made known at that time. See Chapter Two.

Pursuant to T.C.A. 32-4-101:

1. Court must enter an order sustaining or denying the right to contest
2. Bonds must be posted
3. Contestant must elect the trial court for the contest

Proceedings To Set Aside Probate In Common Form

Pursuant to T.C.A. 32-4-108, "all actions or proceedings to set aside the probate of any will, or petitions to certify a will for an issue of devisavit vel non, must be brought within two (2) years from entry of the order admitting the will to probate, or be forever barred, saving, however, to persons under the age of eighteen (18) years or adjudicated incompetent, at the time the cause of action accrues."

Pursuant to T.C.A. 32-4-101:

1. Court must enter an order sustaining or denying the right to contest
2. Bonds must be posted

3. Contestant must elect the trial court for the contest

A proceeding to set aside a probate in common form is filed in the form of a complaint, with a summons issued to all interested parties. See *Pritchard on Wills and Administration of Estates*, Chapter 6, Article III.

CHAPTER FOUR

LETTERS AND BOND

Legal Authority (T.C.A. 30-1-101 et seq.)

No person may enter upon the administration of a deceased person's estate until he/she has procured authorizing letters, whether they be testamentary or of administration. T.C.A. 30-1-101. A person serving as an executor or administrator may also be referred to as a personal representative. A non-resident fiduciary, unless qualifying with a state resident, must register with the Secretary of State, designating them as an agent for service of process pursuant to T.C.A. 35-50-107. All Letters shall be recorded by the clerk.

1. Letters Testamentary are issued to the person named as executor in the Last Will and Testament of a decedent.
2. Letters of Administration are issued to the person serving on an intestate estate.
3. Letters of Administration CTA are issued to a person other than the person named as executor in the Last Will and Testament.
4. Administrator pendente lite is appointed where a will is contested.
5. Administrator ad litem is appointed where there is no personal representative or the personal representative is adversely interested.

The Probate Court of the county of decedent's residence has jurisdiction to grant letters. If the decedent was a resident of more than one county, either county has jurisdiction. T.C.A. 30-1-102, T.C.A. 32-2-101 If the decedent is a nonresident of the state, the Probate Court of any county in this state has jurisdiction where (1) the deceased has property; (2) any debtor of the deceased resides; (3) any debtor of a debtor of the deceased resides, if debt is unpaid; and (4) any suit is to be brought, prosecuted, or defended in which the estate has an interest. T.C.A. 30-1-103; any nonresident may serve as personal representative of an estate. See T.C.A. 30-1-104 regarding service of process.

Application for Letters Testamentary or Letters of Administration shall be made by a verified petition (T.C.A. 30-1-117). No notice is required except for a solemn form probate.

Any personal representative shall take an oath for faithful performance and that the petitioner(s) has not had any felony convictions requiring incarceration in a penitentiary. The oath may be taken in the presence of the judge, a clerk or a notary public (T.C.A. 30-1-111).

In an intestate estate, administration shall be granted to first the spouse, then to the next of kin, and then to a creditor proving debt (T.C.A. 30-1-106).

Bond

Bond is required unless:

1. The will waives bond
2. The residuary beneficiary and the personal representative are the same and the court approves
3. All beneficiaries of the estate are adults and waive in writing, sworn to or signed under penalty of perjury, and the court approves
4. The personal representative is a bank and excused pursuant to 45-2-1005.

If bond is required, letters shall not issue until a sufficient bond is made by the personal

representative. Bond shall be at least the value of the estate and not more than double the value of the estate. (Pursuant to T.C.A. 31-2-103, the real property vests immediately on death and is not administered by the personal representative unless authority is given in the will or upon court order). The bond shall be payable to the state and have two sureties or one corporate surety.

Creditor to Qualify

If neither the spouse nor next of kin make application for administration, then administration shall be granted to a creditor proving the decedent's debt on oath before the Probate Court; provided, that when there is more than one next of kin, the Probate Court may decide which of the kin shall be entitled to administration (T. C. A. 30-1-106).

The court may appoint an administrator when six (6) months have elapsed from death, and no person will apply or can be procured to administer on the decedent's estate (T.C.A. 30-1-301.)

Declination to Serve

A person named to serve as personal representative in a will may decline to serve by doing so in writing, sworn to or signed under penalty of perjury, and the court approves pursuant to T.C.A. 30-1-112 (a).

CHAPTER FIVE

ELECTIVE SHARE AND ALLOWANCES

Upon application by the surviving spouse, the personal representative is required to disclose the state and condition of the estate so that the surviving spouse may act as personal interest may require. (T.C.A. 31-4-103)

These petitions may only be filed within 9 months after the date of the decedent's death. (T.C.A. 31-4-102)

Allowances to Family

Specific Exemptions can be found in T.C.A. 30-2-101, et seq.

Homestead

The Tennessee Constitution Article 11, Section 11 provides as follows:

“There shall be a homestead exemption from execution in an amount of five thousand dollars or such greater amount as the General Assembly may establish. The General Assembly shall also establish personal property exemptions. The definition and application of the homestead and personal property exemptions and the manner in which they may be waived shall be as prescribed by law.”

The right to homestead is essentially a right to occupancy for life. The descent of homestead is provided for by statute (T.C.A. 30-2-201 thru 30-2-211) as follows:

Unless the homestead has been converted to cash by court order (T.C.A. 30-2-209) and distributed, the homestead exempt in the possession of or belonging to each head of a family shall, upon such person's death, any provision by will to the contrary notwithstanding, go to the surviving spouse during his/her natural life, with the products thereof, for his/her own use and benefit and that of his/her family who reside with him/her, and upon his/her death, any provision by will to the contrary notwithstanding, it shall go to the minor children of the decedent, free from the debts of the father, mother, or said children. Upon the death of the minor child or children, or their arrival of age, the land may be sold, and the proceeds distributed among the heirs of the deceased head of a family as if he/she had died intestate.

Upon the death of said head of a family, without surviving spouse or minor children, said land shall be subject to sale for the payment of the debts as may be legally established against his/her estate as in other cases, and the remainder distributed among the heirs.

The value of improvements are included in setting aside homestead. Clark vs. Bullen, 247 S.W. 107, 147 Tenn. 261 (1922)

Homestead is not exempt from sale for the payment of public taxes legally assessed upon it, or from sale for the satisfaction of any debt or liability contracted for its purchase or for improvements made on the homestead. (T.C.A. 26-2-306)

The head of a family in his/her lifetime may elect where his/her homestead is to be, whether living on it or not. (T.C.A. 26-2-307)

The right to homestead exists in land held by entireties. Triable vs. Trimble, 458 S.W.2d 794, 224 Tenn. 571 (1970). Homestead cannot exist in lands held by tenancy in common, though by husband and wife. Kellar vs. Kellar, 221 S.W. 189, 142 Tenn. 524 (1920)

Procedure to Set Aside Homestead

The surviving spouse may make application to the Probate Court (or circuit or chancery) in the county where the deceased spouse last resided, for the appointment of two freeholders or householders of the county unconnected by affinity or consanguinity with those interested in the estate of the deceased, to allot and set apart, in connection with the county surveyor, or his/her deputy, to the applicant, homestead. (T.C.A. 30-2-204)

When making application, the petition must be served upon the personal representative, if one has been appointed, and upon the heirs or devisees, and distributees or legatees, resident in the state. If there is a minor interested, his/her guardian must be served, and, if no guardian has been appointed, the court must appoint a guardian ad litem for the minor. (T.C.A. 30-2-203)

The county surveyor or his/her deputy shall notify the two freeholders or householders (commissioners) appointed by the court of the time and place, to be designated by him/her, of laying off the homestead. He/she will place them under oath for faithful and true performance. (T.C.A. 30-2-207). Commissioners may view, and take into estimate, lands outside the county if directed to by the court's order. (T.C.A. 30-2-208).

If real estate is so situated that homestead cannot be set apart as provided by law, then the realty shall be sold and \$35,000.00 of the proceeds invested in real estate, under the direction of the court having jurisdiction to be held as homestead, or the court may order the payment of \$35,000.00 in cash or personal property outright in lieu of homestead rights in the realty of the deceased. (T.C.A. 30-2-209.) Individuals who jointly own and use real property as their principal place of residence shall be entitled to an aggregate amount of \$52,500 (TCA 26-2-301)

The commissioners must exhibit in their report a plat of the homestead, and also plainly set forth the homestead by metes and bounds where the homestead can be so assigned, and if the report is confirmed by the court, the clerks shall enter it in full with the plat on the records of the court. (T.C.A. 30-2-210)

Unless the applicant for homestead is a personal representative of the deceased, the proceedings are short and simple, without the aid of a jury and with a minimum of formality. The court shall hear the application, determine it, and make an order at the first term after notice. (T.C.A. 30-2-206)

The clerk shall within forty days after adjournment of the court, deliver to the county surveyor a copy of the order. (T.C.A. 30-2-207) (County surveyors are provided for by the Tennessee Code, Title 8, Chapter 12.)

Election By Spouse Against Decedent's Will

Dower and curtesy as heretofore known have been abolished. However, this abolition does not abridge nor affect rights which vested before April 1, 1977. (T.C.A. 31-2-102)

If a married person domiciled in this state dies, the surviving spouse has a right of election to take an elective share of the decedent's estate. Such elective share, when so determined, shall be exempt from the claims of the unsecured creditors. (T.C.A. 31-4-101)

Any conveyance made fraudulently to children or others with an intent to defeat the surviving spouse of his or her distributive or elective share, is voidable at the election of the surviving spouse. (T.C.A. 31-1-105)

Procedure

The surviving spouse may elect to take his or her elective share in the probate estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of death.

The court shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the decedent's estate whose interests will be adversely affected by the taking of the elective share.

The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

After notice and hearing, the court shall determine the elective share and shall order its distribution and/or vesting to the surviving spouse. If it appears that a fund or property has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceedings may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he/she would have been if relief had been secured against all persons subject to contribution.

The order or judgment of the court may be enforced as necessary in a suit for contribution or payment in other courts of this state or other jurisdictions. (T.C.A. 31-4-102)

CHAPTER SIX

INTESTACY

Formerly, the law made a sharp distinction between real property (which descends) and personal property (which is distributed). Different rules governed the descent and distribution of property upon the death of a person who died without a will. Although the distinction between real and personal property remains important in areas of today's law, real and personal property in Tennessee now follow the same scheme in intestate descent and distribution.

Today, when any person dies intestate, after the payment of debts and charges against the estate, his/her property passes to his/her heirs as prescribed below. Any part of the estate of a decedent not effectively disposed of by will passes to his/her heirs in the same manner.

General Rules of Descent

Share of the Surviving Spouse

The intestate share of the surviving spouse is:

1. If there is no surviving issue of the decedent, the entire intestate estate.
2. If there are surviving issue of the decedent, either one-third (1/3) or a child's share of the entire intestate estate, whichever is greater. (T.C.A. 31-2-104)

Share of Heirs Other Than Surviving Spouse

The part of the intestate estate not passing to the surviving spouse, or the entire intestate estate if there is no surviving spouse, passes as follows:

1. To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;
2. If there is no surviving issue, to his/her parent or parents equally;
3. If there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother and sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take by representation.
4. If there is no surviving issue, parent, or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation, and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or maternal side, the entire estate passes to the relatives on the other side in the same manner as the half. (T.C.A. 31-2-104)(b))

Effect of Divorce, Annulment, and Decree of Separation

A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse, unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation which does not terminate the status of a husband and wife is not a divorce for purposes of intestate succession or elective share from a will

The Parent-Child Relationship

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

1. An adopted person is the child of an adopting parent and not of the natural parents, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.
2. In cases not covered by 1 above, a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
 - a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void, or
 - b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this subdivision is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child. (T.C.A. 31-2-105)

Afterborn Heirs

Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent. (T.C.A. 31-2-108)

Renunciation or Disclaimer of Succession (T.C.A. 31-1-103)

Person Feloniously Killing Another Forfeits All Rights In and To Deceased's Property

Any person who shall kill or conspire with another to kill, or procure to be killed, any other person from which said first named person would inherit the property, either real or personal or any part thereof, belonging to such deceased person at the time of death, or who would take said property, or any other part thereof, belonging to such deceased person at the time of death, or who would take said property, or any other part thereof, by will, deed, or otherwise, at the death of the deceased, shall forfeit all right therein, and the same shall go as it would have gone under the provision of section T.C.A. 31-2-104, or by will, deed or other conveyance, as the case may be, provided, that this section shall not apply to any such killing as may be done by accident or in self defense. (T.C.A. 31-1-106)

Escheats

If a decedent, whether or not he/she is domiciled in this state, leaves no one to take his/her estate or any portion thereof by his/her will and no one other than a government or governmental subdivision or agency to take his/her estate or a portion thereof by intestate succession, under the laws of this state or any other jurisdiction, the same escheats to the state as of the time of his/her death. (T.C.A. 31-6-101(a))

Property passing to the state, whether held by state or its officers is subject to the same liens, charges and trusts to which it would have been subject if it had passed by will or intestate succession. (T.C.A. 31-6-101(b))

See T.C.A. 31-6-101 through 31-6-109 for details of escheat proceedings.

The Probate Court has jurisdiction to partition real estate and order distribution among heirs and distributees, and has full power to cause accounts to be taken and valuations of lands to be made, so as to enforce equality of partition and distribution. (T.C.A. 31-5-105).

CHAPTER SEVEN

INVENTORY OF ESTATE

Making Inventory-Return Notice to Beneficiaries

The personal representative, within sixty days after entering on the administration of a testate or intestate estate, shall make a complete and accurate inventory of the probate estate of the deceased and return the same to the Clerk of the Court, verified by his/her oath. Inventory may be excused by the will or all distributees or legatees. If any residuary beneficiary refuses to agree to the waiver or later revokes his agreement, the requirement of an inventory is reinstated. (Secor's TN Probate)

The personal representative, within sixty days after entering on the administration shall notify:

1. Each legatee, devisee or entity by sending, by first class mail or personal delivery, a complete copy of the paragraph(s) of the will containing such bequests to those beneficiaries only receiving bequests; and a complete copy of the will to those beneficiaries sharing in the residue of the estate.
2. Each residuary distributee of the deceased for an intestate estate by sending such persons a copy of letters of administration.
3. A trustee, if any portion is distributable to a trustee, by sending a copy of the will.

Within the sixty-day period, the personal representative shall also execute and file with the clerk an affidavit that the required copies have been mailed or delivered to the beneficiaries or distributees, and explanation of effort to identify and locate any to whom copies have not been sent. (T.C.A. 30-2-301)

Inventory of Safe Deposit Box

There are two statutes governing safety deposit boxes. One statute is found in the inheritance tax chapter (T.C.A. Sec. 67-8-418) of the Code and the other statute is contained in the statutes governing banking institutions. (T.C.A. Sec. 45-2-905). To the extent the two statutes are in conflict, the latter statute controls.

Recording of Inventory

The clerk shall present the inventory to the court, and, if it appears to be regular, the court shall order it to be recorded in the book of inventories. (T.C.A. 30-2-302).

Inventory by a personal representative appointed to succeed a resigned representative shall be returned in one month from the time of appointment. (T.C.A. 30-1-113)

CHAPTER EIGHT

INSOLVENT ESTATES

Initiation of Administration

The administration of an insolvent estate shall begin upon the filing of a Petition to Probate or the application for Letters of Administration by the personal representative or a creditor in the Court having probate jurisdiction. (T.C.A. 30-5-101)

If the value of all assets of the deceased, including real estate which could be recovered (TCA 30-2-402), is insufficient to pay the debts, expenses and taxes of the decedent, the estate is insolvent.

Notice of Insolvency-Filing Copies

After the time for filing claims has expired as provided by T.C.A. 30-2-310, if the estate is unable to pay all of its creditors, the personal representative shall file with the clerk a Notice of Insolvency. A copy of the notice shall be sent by certified mail, return receipt requested, to each creditor who has filed a claim. Such notice may be mailed to creditors by the attorney for the estate, the personal representative or, if requested, by the clerk. (T.C.A. 30-5-102)

Notice of Insolvency - Contents - Effect of No Objection

The notice of insolvency shall contain an accounting of assets which have come into the hands of the personal representative and a proposed plan of distribution in accordance with T.C.A. 30-2-317.

Such notice shall bear, in a conspicuous manner, the following language “**Objections to this proposed plan of distribution must be filed with the clerk within thirty days from the date of receipt of this notice.**”

If no objections are filed within the thirty-day period, the personal representative may execute the proposed plan of distribution, and close the estate, relieving personal representative of any further liability to the estate. (T.C.A. 30-5-103)

Hearing on Objections to Plan Notice

If an objection to the proposed plan of distribution is filed with the clerk within the thirty day waiting period, the clerk shall schedule a hearing no less than fifteen days or more than thirty days from the last day which objections may be filed.

The clerk shall give notice of the hearing date to the attorney for the estate, to the personal representative, and to the creditors filing the objection, and to all claiming creditors (T.C.A. 30-5-104)

Clerk's Report

After the hearing, the clerk is to report his/her finding to the court within ten days. (T.C.A. 30-5-105)

If no exceptions are filed with the clerk, the clerk's report shall become the judgment of the court.

If an exception is filed, the matter shall be determined by the court.

Upon final determination of an objection to a plan of distribution, distribution shall be made and the estate closed. (T.C.A. 30-5-105)

CHAPTER NINE

CLAIMS

Notice to Creditors

It is the duty of the Clerk of the court in which an estate is being administered, within thirty (30) days after the issuance of letters testamentary or of administration, to give, in the name of the personal representative of the estate, public notice of the personal representative's qualification as such by two (2) consecutive weekly notices published in some newspaper of the county in which letters testamentary or of administration are granted, or, if no newspaper is published in that county, by written notices posted in three (3) public places in the county, one (1) of which shall be posted at the usual place for posting notices at the courthouse. (T.C.A. Sec.30-2-306(a)) The requirement of notice set forth above shall not apply if the letters testamentary or of administration are issued more than one (1) year from the decedent's date of death. (T.C.A. Sec. 30-2-306(e))

Duty of Personal Representative to notify Creditors

It is also the duty of the personal representative to notify any creditors of whom the personal representative has actual knowledge, or who are reasonably ascertainable, by personally delivering or mailing a copy of the published or posted notice.(T.C.A. 30-2-306 (d)).

Affidavit of Publication or Posting

Either an affidavit of the publisher of the newspaper in which the notice ran, or an affidavit of the personal representative in the case of public notice, shall be filed with the court evidencing the dates the notice ran in the newspaper, or the date on which the notice was first posted. (T.C.A. Sec. 30-2-306(c))

Time Limitations on Filing of Claims

All claims and demands against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in the notice published or posted as described above in accordance with T.C.A. 30-2-306(b). Claims must be filed with the clerk within the earlier of four (4) months from the date of the first publication (or of the posting, as the case may be) of said notice or twelve (12) months from the decedent's date of death.

TennCare Claims

If the bureau of TennCare receives a notice to creditors as defined, a claim must be filed with the court or is forever barred within twelve (12) months of the decedent's date of death. If TennCare does not receive notice to creditors as defined, a claim must be filed with the court within forty-eight (48) months from the date of the decedent's death. If a claim is not filed by the bureau of TennCare pursuant to the aforementioned avenues, then the requirements of T.C.A. 71-5-116(c)(2) do not apply.

However, pursuant to T.C.A. 30-2-307(a)(1)(A) & (B):

- (1) If a creditor receives actual notice less than sixty (60) days before the expiration of the period prescribed in T.C.A. 30-2-306(b) or after the expiration of the period prescribed in T.C.A. 30-2-306(b) and more than sixty days before the date which is twelve months from the decedent's date of death, such creditor's claim shall be barred unless filed within sixty days from the date of receipt of actual notice; or
- (2) If a creditor receives actual notice less than sixty days before the date which is twelve months from the decedent's date of death or receives no notice, such creditor's claim shall

be barred unless filed within twelve months from the decedent's date of death.

Requirements of filed claims

The clerk shall file all claims which are filed not later than twelve (12) months from the decedent's date of death. The clerk shall return any claim submitted before the appointment of a personal representative or received more than twelve (12) months from the decedent's date of death. The filing of a claim by the clerk shall not create an inference as to whether the claim was timely filed. T.C.A. 30-2-307(d)

All claims filed with the clerk must be submitted in triplicate. The second and third copies do not need to be verified. T.C.A. 30-2-307(c)

Each claim must include: T.C.A. 30-2-307(b)

- a. An affidavit of the creditor, verified before an officer authorized to administer oaths, which states that the claim is a correct, just and valid obligation of the estate of the decedent, that neither the claimant nor any other person on the claimant's behalf has received payment of the claim, in whole or in part, except such as is credited thereon, and that no security for the claim has been received, except as thereon stated;
- b. If claim is evidenced by a written instrument, a photocopy of the instrument shall be filed;
- c. If claim is due by a judgment of decree, a copy of the judgment or decree, certified by the clerk of the court where rendered shall be filed;
- d. If claim is due by an open account, an itemized statement of the account shall be filed;

The fees authorized by T.C.A. 8-21-402(c)(1)(A) shall be paid to the clerk by the claimant at the time the claim is filed. T.C.A. 30-2-312

Entry of claim by clerk

Each claim filed with the clerk shall be entered in a well-bound book, (or entered in the computer) in which the following information shall be set forth: T.C.A. 30-2-312

- a. Title of the estate;
- b. Name and address of the creditor (as reflected by the claim filed);
- c. Nature and amount of the claim; and
- d. Date of filing.

Triplicate copies of the first pleading filed in original actions against a personal representative shall be filed with the clerk of the court where the administration originated, to be noted by the clerk in the record of claims as are other claims filed. T.C.A. Sec. 30-2-308

Clerk's Notice to Personal Representative

Within five (5) days of clerk entering claim, the clerk shall notify the personal representative and the attorney of record by mailing each a true and correct copy of the claim. T.C.A. Sec. 30-2-313(a)

Exceptions to claim

Until thirty days after the expiration of four months from the date of the notice to creditors given as provided in T.C.A. 30-2-306(b), the personal representative, or any party interested in the estate either as creditor, distributee, heir or otherwise, may except to such claim by filing written exceptions in triplicate with the clerk of the court in which the estate is being administered. T.C.A. Sec. 30-2-314(a)

However, if the filing of the claim as permitted by T.C.A. 30-2-307(a), occurs after the date which

is four months from the date of the notice to creditors, the personal representative, or interested party may except to any such claim by filing written exceptions in triplicate with the clerk of the court in which the estate is being administered; provided that such exception is filed no later than thirty days from the date the personal representative receives notice from the clerk of the filing of the claim. Each exception shall include a reasonably detailed explanation of the ground or grounds upon which the person making such exceptions intends to rely. T.C.A. 30-2-314(a)

Within five days after the filing of exceptions to a claim the clerk shall notify the claimant of the exception by mailing the claimant a copy of the exception. T.C.A. 30-2-314(a)

Trial of Disputed Claims- Jury Demanded

Should the claimant or party excepting desire a trial by jury, it shall be demanded by that party in the first claim or exception filed. However, a claimant who has not demanded a jury in the claimant's claim may do so within five days after receipt of notice of the filing of exceptions to the claim by filing a written demand for a jury with the Probate Court clerk. T.C.A. 30-2-313(c)

Both the circuit and the Probate Court, if it is a chancery or other court of record, have jurisdiction to conduct a trial by jury on claims and exceptions and shall be conducted all in the same manner and to the same extent as prescribed in T.C.A. 30-2-314. T.C.A. 30-2-314(e)

Trial of Disputed Claims- No Jury Demand

Unless a trial by jury is demanded, the claim is always disposed of in the Probate Court. Within ten days after the filing of the exception to the claim, the clerk shall set a date for the hearing of the exception to the claim, and mail notice of hearing to the personal representative, the claimant, and the party filing the exception. The hearing date shall not be less than fifteen days after the date of mailing the notice of hearing, nor more than eight months after the date of the notice to creditors. T.C.A. 30-2-315(a)(1)

The probate judge or clerk & master shall hear all the issues arising upon such exceptions when no jury is demanded. No other pleadings are required, and the testimony may be taken orally or by deposition. The court shall assess the cost accruing in consequence of the exceptions in accordance with its discretion, and all charges against the personal representative are proper charges against the estate. T.C.A. 30-2-315(a)(2)-(4)

A judgment upon the findings of the court shall be entered in the court and from the same an appeal may be perfected within thirty days from the date of entry of the judgment, to the Court of Appeals or the Supreme Court, as the case may be. The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure.

A copy of the order, determining the claim to be valid or invalid, should be sent to the claimant as well as the personal representative.

Judgment on claim when no exception filed

After the lapse of ninety days from and after the expiration of the time for entering exceptions to claims filed against the estate, the court may, upon the written application of any creditor, having a matured claim on which no independent suit is pending, to whose duly filed claim no exception has been filed, enter judgment for the creditor against the estate, provided that not less than five days' prior written notice of intention to file an application shall be given to the personal representative, stating the time at which the application is to be presented to the court. T.C.A. 30-2-316

Priority of claims

The year's support is an expense of administration. (Hyder v. Hyder, 66 S.W.2d 235, 16 Tenn. App. 64 (1932)) It is made irrespective of the condition of the estate as to its solvency or insolvency. (Graham v. Stull, 22 S.W. 738, 92 Tenn. 673, (1893))

The right of a surviving spouse to an elective share is superior to the rights of general creditors.

Homestead is not exempt from public taxes on it, vendor's liens for the property, or mechanics or materialman's liens for the improvements on it. (T.C.A. 26-2-306)

The estate may have property taxes (T.C.A. 67-5-502) and state income taxes (T.C.A. 67-2-110) which the personal representative shall pay as directed by the will or trust or otherwise from the assets of the estate.

All claims or demands against the estate of any deceased person shall be divided into the following classifications, which shall have priority in the order shown: T.C.A. 30-2-317(a)

- a. Costs of administration, including but not limited to, premiums on the fiduciary bonds and reasonable compensation to the personal representative and the personal representative's counsel;
- b. Reasonable funeral expenses;
- c. Taxes and assessments imposed by the federal or any state government or subdivision of the federal or any state government, including claims by the bureau of TennCare pursuant to T.C.A. 71-5-116; and
- d. All other demands that may be filed as aforementioned within four (4) months after the date of notice to creditors.

The personal representative shall pay all demands against the estate in the order in which they are classified, and no claim shall be paid until the prior classes are satisfied. If there are not sufficient funds to pay all the claims in a class, the claims in that class shall be paid pro rata. T.C.A. 30-2-317(b)

Personal Representative Fees

Case law provides that executors and administrators shall be allowed by the court a reasonable compensation for their services to be approved prior to or at the time of the final accounting. However, if the will states a certain amount as compensation for the executor, or no compensation, the executor is bound to the terms of the will if he/she accepts the appointment. (Perlberg vs Jahn, cite as 773 S.W. 2d 925 (Tenn. App. 1989))

When an attorney serves as personal representative of an estate he/she may either employ other counsel or furnish his/her own professional services. When he/she furnishes his/her own services and saves the estate counsel fees by diligent and official legal services he/she should be allowed a greater compensation than ordinarily granted to a personal representative employing other counsel, but he/she can be paid only in his/her capacity as personal representative and not in both capacities.

Clerk's Fees and Court Costs

The clerks of the various courts administering estates, guardianships, conservatorships, and other probate matters are entitled to demand and shall receive for their services fees as set out in T.C.A. 8-21-401(b).

Time for Payment of Claims

All uncontested claims and all contested claims that have been finally adjudged and allowed shall be paid by the personal representative as soon as practicable (not in any event to exceed ninety (90) days after the expiration of five (5) months after the date of the notice to creditors, if the estate is solvent and the claims are paid according to classification as set forth above. T.C.A. 30-2-319.

CHAPTER TEN

DISTRIBUTION

Time for Payment of Claims

All uncontested claims and all contested claims which have been finally adjudged and allowed shall be paid by the personal representative as soon as practicable, (but not in any event to exceed ninety days after the expiration of five months after the date of notice to creditors) if, after having segregated sufficient assets to meet the contingent liabilities referred to in T.C.A. 30-2-317, adequate assets are in his hands for this purpose, payment being made according to the classification of claims.(T.C.A 30-2-319)

Distribution of Balance – Final Settlement

Upon the payment of all uncontested claims and upon provision being made for expenses of administration, obligations on account of taxes and assessments which have not been settled, claims not due and undetermined contested claims, together with costs and expenses of litigation, the personal representative shall pay any balance to the distributees or legatees entitled thereto, unless granted additional time by the court, or by the terms of the instrument under which the personal representative is acting, and thereafter, the personal representative shall make and file with the court a final settlement of the estate.

Distributees Who Cannot Be Located, Infants, Persons Under Other Disabilities- Procedure for Payment of Shares

Whenever the personal representative of the estate of any deceased person in this state is ready to make his final report and settlement, and is prevented or precluded from making final settlement, because there is no personal representative of the estate of a deceased distributee to receive the share due such distributee or one or more payees or distributees cannot be located or for any reason refuse to receive the share due such distributee, such personal representative shall pay or deliver the share due any such distributee to the state treasurer, to be handled in accordance with the provisions of T.C.A. 66-29-1, relating to unclaimed property, and show such in his report. This share can be recovered later.

In cases involving payees or distributees who are infants or lunatics and without guardian authorized to receive the property, the personal representative, before making final settlement, shall file a petition in the court in which the estate is being administered setting out this fact and pray for the appointment of a guardian, unless petition is made pursuant to T.C.A. 34-1-107. The court shall appoint a guardian, if practicable, or if impracticable, order the property belonging to such person paid or delivered into the state treasury, unless distribution is ordered pursuant to T.C.A. 34-1-107. Such payment or delivery shall be shown in the report and settlement of the personal representative, exhibiting the receipt of the guardian or state treasurer, as the case may be.

If the personal representative of the estate of a deceased person is unable to locate a distributee and such distributee's share of the estate is either personal property of nominal value or monetary legacy of nominal value, the personal representative may request instructions from the court concerning the amount, if any, which should be spent in locating the distributee and whether the amount spent in locating the distributee should be a general expense of the estate or a charge against the lost distributee's share and the disposition of the property if the distributee cannot be found, which disposition may include the authority to sell any tangible personal property. (T.C.A. 30-2-702)

Shares Placed in State Treasury – Application and Claim for Share

Shares so placed in the state treasury shall not become the property of the state, but shall be and remain trust property demandable at any time by the owner or by the guardian of any owner, distributee or by the personal representative of the deceased owner.

Property delivered to the treasurer pursuant to T.C.A. 30-2-702, may be claimed in accordance with the provisions of T.C.A. 66-29-102, et seq., governing the disposition of unclaimed property. (T.C.A. 30-2-703)

Refunding Bonds

Every legatee and distributee, or other person representing him, who applies for payment of his portion of the decedent's estate, or any part thereof, prior to the time provided therefore by law, shall, before receiving the same, give bond with two or more sufficient, or one corporate surety, in double the amount so to be paid, payable to the state, conditioned that if any debt or debts truly owing by the deceased shall be afterwards sued for and recovered or be otherwise duly made to appear, the legatee or distributee shall refund and pay his ratable part of such debt or debts out of the share or part so allotted to him. (T.C.A. 30-2-704)

Application for Distributive Share of Legacy – Jurisdiction

Any distributee or legatee of the estate may, after the expiration of eighteen months from the grant of letters, apply to the probate or Chancery Court of the county in which administration was taken out, to compel the payment of his distributive share or legacy. (T.C.A. 30-2-710(a))

CHAPTER ELEVEN

ACCOUNTINGS AND SETTLEMENTS

Accountings - Statement in Lieu of Accounting - (T.C.A. 30-2-601)

Within fifteen months from the date of qualification, the personal representative shall make an accounting with the clerk of the court exercising probate jurisdiction in the county of the estate. If accountings have been waived by the decedent's will or other pleadings filed with the court, the personal representative shall not be required to file a detailed accounting but shall be required to file a status report detailing any remaining estate issues within fifteen (15) months from the date of qualification and annually each year thereafter as long as the estate remains open. After the first accounting and until the estate is fully administered, the personal representative shall make further accountings, annually from the date of the first accounting. Such accounting shall state all receipts, disbursements and distributions of principal and income for the accounting period and the remaining assets held in the estate and shall be verified by the oath of the personal representative before the clerk or any person authorized by law to administer oaths in such cases. The final such accounting shall state the personal representative has mailed to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative. For good cause shown to the court, it may extend the time for filing the accountings. However, detailed accountings of solvent estate may be waived if:

1. The decedent by his will waived the requirements for the personal representative to make court accountings of the estate; or
2. All of the distributees of the residue file with the clerk of the court sworn waivers, pursuant to the statute, excusing the personal representative from filing all court accountings.

If all court accountings are waived by the decedent's will or by sworn statements of the distributees as above provided and notwithstanding any other provisions of probate law to the contrary, the personal representative and distributees of the residue of a solvent estate, in which all legitimate claims against such estate have been satisfied, may file a statement with the clerk of the court at any time after the period for creditors to file claims against the estate has expired, to state substantially as follows:

3. That the personal representative has properly administered the estate, has paid or settled all claims which were lawfully presented, has paid all expenses of administration, has mailed or delivered notice of the requirement to file claims, as prescribed in (T.C.A. 30-2-306(e)), to the creditors of the decedent who were known or reasonably ascertainable by the personal representative, has filed with the clerk of the court exercising probate jurisdiction the final receipt and release from the Tennessee department of revenue, for deaths prior on or before December 31, 2015, evidencing payment of all Tennessee inheritance and/or estate taxes due from the state, unless waived pursuant to (T.C.A. 67-8-409(g)), has distributed the estate according to the will and obtained and filed receipts for specific bequests or has distributed the estate according to the laws of intestate succession; and
4. That the distributees of the residue acknowledge that the estate has been properly distributed to them, pursuant to statute. (T.C.A. 30-2-601(b)(1)-(2))

Additionally, it is advisable to include in the statement that the personal representative has filed a release from TennCare in accordance with (T.C.A. 71-5-116(c)(2)).

The filing of such sworn statement, and without the requirement of notice of an accounting by the clerk, shall relieve the personal representative and all such distributees of any requirement of law or rule to file a detailed statement, accounting or receipt of any property, money or other items received from the estate. The provisions of this section shall not apply unless all distributees of the residue of an estate file such sworn statement, pursuant to statute, in lieu of a more detailed accounting that may otherwise be required. (T.C.A. 30-2-601(c))
All accountings should be supported by financial institution statements and or vouchers, to be submitted with the accounting. (T.C.A. 30-2-601(e))

Representative's Duty Before Final Settlement

Upon the payment of all claims which are not contested and upon provision being made for expenses of administration, obligations on account of taxes and assessments which have not been settled, claims not due and undetermined contested claims, together with costs and expenses of litigation, the personal representative shall pay any balance remaining in his hands to the distributees or legatees entitled thereto (often residuary beneficiaries or also distributees in intestate cases) or he/she shall pay the balance into the state treasury for distributees who cannot be located. (T.C.A. 30-2-701)

The personal representative also may need to petition the court for sale of realty to pay claims. (T.C.A. 30-2-402) (See Chapter Eighteen – Sale of Real Estate in Decedent' Estates)

Citation to Appear and Settle

If any personal representative fails to settle accounts as prescribed in (T.C. A. 30-2-61), the clerk shall cite the personal representative to appear and settle on a given day, and the citation shall be served and returned with endorsement of service by the sheriff. At the clerk's discretion, any citation issued for the appearance of a personal representative pursuant to this section may be served by sending such citation by certified mail with return receipt to the personal representative's last known address. (T.C.A. 30-2-602).

Avoidance or Disobedience of Citation

No executor or administrator shall neglect or refuse, for thirty days after service of a citation, or subpoena, to appear before the clerk of the Probate Court and settle his/her accounts. T.C.A. 30-2-613(a) Avoidance or disobedience of the citation is punishable for contempt in the Probate Court.

T.C.A. 30-2-602 Upon finding of contempt the judge may take those measures allowed by law, or upon indictment or presentment in the Circuit or Criminal Court, the delinquent shall be fined not less than one dollar nor more than twenty-five dollars. T.C.A. 30-2-613(c)

The clerk shall return to the clerk of the circuit or criminal court, on or before the first day of every term of such court having jurisdiction, a list of such delinquents and the district attorney will prefer against each of them an indictment without a prosecutor. T.C.A. 30-2-613(b); T.C.A. 18-6-106

Notice of Accounting to Parties Interested

No account of any personal representative shall be taken until the clerk of the probate or Chancery Court, taking the same, or the personal representative or the personal representative's attorney has served the parties interested with notice of taking the account at least five (5) days before the time fixed for taking the same. Such notice may be waived in writing by any legatee, distributee or other person interested in the estate. (T.C.A. 30-2-603)

If addresses of heirs, distributees, or other persons interested in the estate are unknown, the personal representative or the personal representative's attorney shall publish notice of the accounting in a newspaper of general circulation in the county with jurisdiction over probate proceedings.

Taking the Settlement

The clerk may, when it seems necessary, examine the accounting party upon oath about his/her receipts and disbursements. This examination may be recorded in writing as a deposition. (T.C.A. 18-6-106) On sufficient cause shown by affidavit, the clerk may continue the settlement from time to time. (T.C.A. 30-2-605; T.C.A. 18-6-106)

The clerk shall charge the accounting party with all such sums of money as he/she has received, or might have received by using due and reasonable diligence, and shall credit him/her with reasonable compensation for services, and with such disbursements as he/she supports by lawful vouchers. (T.C.A. 30-2-606) The clerk will partially depend upon the inventory filed; he/she shall inquire into accounts of sales. The clerk should inquire as far and with as much detail so that he/she may determine that the sum of all the items with which the representative is charged are found, included, receipted, and stated in the account. If the first settlement is not final, that fact, and the reason for it, ought to be affirmatively stated, and the balance due from the executor or administrator should be carried over as the chargeable amount in his next settlement, and so on until a final settlement is reached.

Balance Upon Settlement

After the settlement of any administrator's or executor's account, the Probate Court may compel the personal representative to pay into the office of the clerk the balance found against him/her, and may on motion of the clerk, or any widow, distributee, or legatee, after twenty days' notice to such personal representative, award summarily an execution against such representative and his/her sureties for the amount of said balance, as in case of a judgment at law, and when any specific thing is to be done, the Probate Court may compel the representative, by an order, to perform it, and by process of contempt in case of refusal. (T.C.A. 30-2-612)

Waiver of Notice and Receipt

In order to make one final settlement upon the first accounting to the clerk, the personal representative may ask the "interested persons" to waive notice, give receipt for their distributive share, and approve the final accounting, pursuant to statute, to be filed with the clerk by sworn statement. (T.C.A. 30-2-603)

Confirming the Settlement

The clerk shall report the settlement to the next term of the court, and if it appears to be regular, the judge will confirm it and order it recorded. (T.C.A. 18-6-106) The settlement when made will be prima facie evidence in favor of the accounting party. (T.C.A. 30-2-610; T.C.A. 24-5-102) Besides the fees allowed to the clerk for his/her service, as provided in former (T.C.A. 8-21-701(28) (30) (repealed)) for taking and stating accounts, the clerk shall receive such further sum as the court of first instance or an appeal may allow, upon a confirmation of the settlement. (T.C.A. 30-2-611)

Exceptions to Account – Appeal

Any person interested in the estate may except to the account within a thirty-day period after it has been stated by the clerk, and if dissatisfied with the clerk's decision on the exceptions, may within an additional thirty-day period appeal to the court. The clerk shall, within five days after the filing of exceptions to the clerk's decision, mail copies of the exceptions to the personal representative and his/her attorney of record. (T.C.A. 30-2-607).

Appeal from Judgment of Court

When the court having probate jurisdiction finally settles an account, any persons adversely affected by the settlement may appeal from the judgment to the court of appeals or the supreme court, as the case may be, unless the legislation establishing the Probate Court provides the

appeal will be a trial court of general jurisdiction, in which case the judge of the trial court will hear the matter de novo. T.C.A. 30-2-609 Statute changed 2010

Sworn Statement by Distributees and Legatees Instead of Detailed Accounting

All of the distributees of the residue may file with the clerk of the court waivers, sworn to or signed under penalty of perjury, excusing the personal representative from filing all court accountings.

Notwithstanding any other provisions of probate law to the contrary, the personal representative and the distributees of the residue of a solvent estate, in which all legitimate claims against such estate have been satisfied, may file a statement with the clerk of the court at any time after the period for creditors to file claims against the estate has expired. T.C.A. 30-2-601(2)

The filing of such statement, and without the requirement of notice of an accounting by the clerk, shall relieve the personal representative and all such distributees of any property, money or other items received from the estate. The provisions of this section shall not apply unless all distributees of the residue of an estate file such statement in lieu of a more detailed accounting that may otherwise be required. T.C.A. 30-2-601(c)

CHAPTER TWELVE

SMALL ESTATES

Legal Authority T.C.A 30-4-101, et seq.

Definitions – Unless the context clearly requires otherwise, the following terms have the meanings ascribed to them:

- (1) “Court” means the court then exercising probate jurisdiction in the county in which the decedent had legal residence on the date of death;
- (2) “Decedent” means a person who is deceased;
- (3) “Limited letters” means the limited letters of administration of a small estate and limited letters testamentary of a small estate, as appropriate;
- (4) “Limited letters of administration of a small estate” means limited letters of administration for the decedent’s property itemized and identified in the petition for the limited letters, which must be attached to and made a part of the limited letters;
- (5) “Limited letters of testamentary of a small estate” means limited letters testamentary for the decedent’s property that restrict the person to whom the limited letters testamentary are issued to the property itemized and identified in the petition for the limited letters which must be attached to and made a part of the limited letters;
- (6) “Person” means an individual, partnership, firm, business trust, corporation or other legal entity, and includes both singular and plural, and the masculine and feminine, as appropriate;
- (7) “Personal representative” means the person to whom limited letters of administration of a small estate or limited letters of testamentary of a small estate are issued;
- (8) “Property” means only personal property, or any interest in personal property, owned by the decedent on the date of death that would be subject to probate, other than personal property held by tenants by the entirety or jointly with right of survivorship, or personal property payable to a beneficiary other than the decedent’s estate; and
- (9) “Small estate” means the probate estate of a decedent in which the value of the property does not exceed fifty thousand dollars (\$50,000.00).

Estates of less than \$50,000.00 may be administered under The Small Estate Probate Act. A “small estate” to which the statute applies is one in which the value of the personal property does not exceed fifty thousand dollars. To be excluded in determining the value of personal property for such purpose is that held jointly with the right of survivorship and also life insurance proceeds and other accounts that are payable to someone other than to the decedent’s estate.

In most instances, the optional method of informal administration offered by The Small Estate Probate Act should be used only in modest, uncomplicated estates. If the decedent left only a small bank account and no significant debts, for example, The Small Estate Probate Act could be useful in collecting assets with the least possible expenses.

Application, costs and Disposition:

T.C.A. 30-4-103

Whenever a decedent leaves a small estate, it may be administered in the following manner:

- (1) After the expiration of forty-five (45) days from the date of the decedent's death, as evidenced by a

copy of the decedent's death certificate, provided that no petition for the appointment of a personal representative of the decedent's estate has been filed in that period of time for the decedent's estate, either:

(A) One (1) or more of the decedent's competent adult heirs shall file a petition for the issuance of limited letters of administration of a small estate; or

(B) If the decedent died testate and it is determined that distribution of the small estate pursuant to the decedent's will is different than distribution by intestate distribution, and it is desired that the small estate be distributed according to the decedent's will, the person named as the personal representative in the decedent's will shall either:

(i) File a petition for the probate of the decedent's will as a muniment of title to the property of the decedent pursuant to § 32-2-111 and for the issuance of limited letters testamentary of a small estate; or

(ii) File the original of the decedent's will together with affidavits of the attesting witnesses or the affidavits of the two (2) disinterested persons attesting to the decedent's handwriting, if the decedent's will is holographic, with the clerk who shall record the will and affidavits. The recording of the decedent's will and accompanying affidavits is deemed sufficient to probate the decedent's will for the purposes of this chapter;

(2) To apply for limited letters of administration of a small estate or for limited letters testamentary of a small estate, the person seeking the limited letters shall file a sworn petition with the court containing the information set forth in § 30-1-117(a)(1)-(10). The petition must include an itemized list of the property of the decedent to which the limited letters are to apply, the value of each item of property, the identity of each creditor of the decedent, and the amount owing to each identified creditor;

(3) Regardless of the language of the decedent's will waiving bond, the petitioner for the limited letters shall make the bond payable to the clerk of the court for the benefit of those entitled with a corporate surety. The amount of the bond must be equal to the value of the decedent's property to be administered under this chapter. However, bond is not required of the petitioner if:

(A) The petitioner or petitioners are the sole heirs of the intestate decedent;

(B) The petitioner or petitioners are the sole beneficiaries of the testate decedent; or

(C) All the adult heirs and beneficiaries consent in writing;

(4) The clerk shall charge and receive such fees for processing a petition for the issuance of limited letters of administration of a small estate or limited letters testamentary of a small estate as provided in § 8-21-401;

(5) Upon posting the required bond, unless waived as set forth in subdivision (3), the clerk shall issue limited letters of administration of a small estate or limited letters testamentary of a small estate, as appropriate, on the form in subdivision (9);

(6) A notice to creditors must not be published, and a creditor is not permitted to file a claim in a small estate probate;

(7) The personal representative and the surety on the personal representative's bond may be discharged from liability under the bond as follows:

(A) The court may enter an order discharging the personal representative and the surety on the personal representative's bond after the personal representative files, for a decedent dying before January 1, 2016, either the tax receipt issued pursuant to § 67-8-420, or the certificate or assessment issued pursuant to §

67-8-409(f); or

(B) The personal representative and the surety on the personal representative's bond may wait until the first anniversary of the issuance of the limited letters when the court shall automatically discharge them from liability. The limited letters must remain open and active until the first anniversary of the issuance of the limited letters;

(8) Upon good cause shown, the court may waive the requirement to wait forty-five (45) days before filing a petition for limited letters; and

(9) The form for issuance of limited letters of administration of a small estate or limited letters testamentary of a small estate must be as follows:

Limited Letters of Administration/Limited Letters Testamentary of a Small Estate

Pursuant to T.C.A. § 30-4-101, et seq.

In the Matter of the Estate of:

Whereas, it appearing that the above-named deceased person left property and debts subject to administration pursuant to the above-referenced statutory provisions, and is hereby authorized to serve in the limited role of Personal Representative.

As such, Limited Letters of Administration/Letters Testamentary of a Small Estate are hereby issued to the above-named individual being now therefore empowered to collect and preserve all assets of the estate, remove any personal property from a property leased by the decedent, and cancel any insurance policies no longer applicable due to decedent's death. Said assets are limited to those itemized in the Petition, a copy of which is attached hereto. The total value of decedent's property shall not exceed \$50,000.00.

There is no real property at issue in this matter, and this limited letter in no way gives any authority to the personal representative to handle any real estate matters of the decedent.

In witness whereof, I have issued these Limited Letters of Administration/Limited Letters Testamentary.

Date: Clerk:

I swear that all statements in the Small Estate documents I have executed and provided are true and accurate. I do solemnly swear or affirm that I will faithfully and honestly discharge the duties imposed upon me and as required by law.

Date: Personal Representative:

I, as Clerk, certify that these Letters are in full force and effect as of this date of issuance.

Date: _____ Clerk: _____

Collection of Debts and Property of Decedent: T.C.A. 30-4-104 (a) and (b) covers collection of personal property belonging to the decedent as well as the collection of debts. Subsection (d) details recovery methods of property

Distribution: T.C.A. 30-4-104 (c) details distribution as follows:

) The decedent's property must be distributed either to the decedent's heirs as provided by law or, if there is a will, in accordance with the terms of the decedent's will admitted to probate as a muniment of title or filed with the clerk as provided in § 30-4-103(1)(B)(ii). The person to whom payment, transfer, or delivery of any property of the decedent is made by the personal representative shall be liable and remain liable up to one (1) year from the date of payment, transfer, or delivery, to the extent of the value of the property received, to unpaid creditors of the decedent, to anyone who had a prior right to the decedent's property, or to any personal representative of the decedent thereafter appointed. If distribution is made prior to payment of all medical assistance owed to TennCare under § 71-5-116, then both the personal representative and the person to whom payment, transfer, or delivery is made by the personal representative shall be liable to TennCare and remain liable, to the extent of the value of the property received.

Conversion to full Probate:

T.C.A. 30-4-104(e) If, during the administration of the small estate pursuant to the limited letters, the personal representative or a creditor of the decedent discovers additional assets that exceed the statutory small estate limitation, then the court may allow the small estate administration to be converted into probate administration by application of a verified petition to the court pursuant to § 30-1-117 by the personal representative of the small estate or a creditor of the decedent. The personal representative of the small estate, if the property of the decedent has not been paid, transferred, or delivered, or the person or persons to whom the property of the decedent has been paid, transferred, or delivered, is liable for the assets that have been paid, transferred, or delivered prior to the conversion.

CHAPTER THIRTEEN

ADMITTING *FOREIGN* WILL TO PROBATE AS A MUNIMENT OF TITLE TO REAL ESTATE

Relevant Statutes and Legal Authority: T.C.A. 32-5-101 *et seq*; Pritchard's 56-57

If a will of a non-resident has been admitted to probate in another state, this Court will admit to probate the entire record from the other state, but it must be duly authenticated pursuant to the Acts of Congress. This requires the clerk to certify that the judge is the judge of the certifying court; the judge certifies that the clerk is the clerk; and the clerk certifies the record.

If necessary, the clerk of our court can furnish a form that the clerk of the foreign court can use to authenticate the record.

The petition to admit the foreign will as a muniment of title may be brought by the executor or by the attorney bringing the petition but no "live testimony" is required. The court is giving full faith and credit to the action of the foreign court in admitting the will to probate.

CHAPTER FOURTEEN

ADMITTING WILL TO PROBATE SOLELY AS A MUNIMENT OF TITLE TO REAL ESTATE AND PERSONAL PROPERTY

Relevant Statutes and Legal Authority: T. C. A. 32-2-111

Regardless of the date of the person's death and any limitation on the time for admitting a will for probate, any will when duly proven, whether of a resident or nonresident decedent, may be admitted to probate for the limited purpose of establishing muniment of title to real and personal property, without the necessity of granting letters testamentary or otherwise proceeding with administration.

This process is a limited purpose probate and does not have the same requirements that a common or solemn form probate has.

The petition should contain all the averments required under T.C.A. 30-1-117, such as names of the witnesses, that the petitioner believes the document is the decedent's last will and testament, etc.

The petitioner is expected to testify as to the fact of death, residence of the testator, the facts necessary to establish the document as being a will. Some judges also like to have some assurance that the debts have been or will be paid and that a TennCare release has been or will be filed even though the muniment of title statute does not specifically require such.

This procedure should not be used in conjunction with a small estate administration.

Everything is done in the same manner as a regular administration except that no personal representative is appointed; there is no publication for creditors, and no follow-up by the clerks. The file can be closed immediately or closed at a later date.

CHAPTER FIFTEEN

REOPENED ESTATES

Legal authority: Pritchard (7th ed.) 577

Petition to Reopen An Estate

If an asset is discovered after closing an estate, it will normally be necessary to re-open the estate and re-appoint the personal representative. The petition should state all the relevant facts relating to the matter and the necessity of re-opening the estate. The attorney should also present some proof that the relevant parties were notified of the reopening of the estate.

The petition is filed by the personal representative, usually the original executor or administrator.

The bond may be waived in the same manner as allowed for the original appointment.

Closing a Re-Opened Estate

The re-opened estate should be closed as soon as the discovered asset has been distributed by filing a petition or motion citing that fact.

A receipt and waiver should be filed or in the alternative, an accounting.

An order should accompany the closing paperwork to close the estate.

CHAPTER SIXTEEN

ESTABLISHING LOST OR SPOLIATED WILLS

Legal Authority: T.C.A. 32-4-106, Pritchard ss 51

The following persons have standing to petition the Court to establish a lost or spoliated will:

- (1) any person named executor in the lost or spoliated will;
- (2) any person who would take an interest under the lost or spoliated will.

In addition to alleging all of the elements that are required for general petitions to admit wills to probate (see page 10 of this guide), the petition to establish lost or spoliated wills should contain:

- (1) a statement of belief that the will was duly executed;
- (2) a copy of the will, or if a copy of the will is not available, a statement of the will's contents;
- (3) a brief, yet complete, statement about the loss or destruction of the will and the circumstances surrounding the loss or destruction;
- (4) a list of the persons who are required to be served with process, and a notation by each name stating the persons' interest in the action, and their connection, if any, with the disappearance of the will;
- (5) a request that the will be established by the Court.

All of the following persons are required to be served with process:

- (1) Anyone who would have an interest under the last prior will,
- (2) Anyone who would have an interest under intestate succession, and
- (3) Anyone who would have an interest under the lost or spoliated will.

Whenever possible, all interested persons who are willing to do so should join in the petition either as plaintiffs or by a joinder in which they consent to the relief sought. The joinder should clearly set forth that those persons waive service of process.

Anyone who has (or who could reasonably be expected to have) knowledge about the whereabouts of the will (or about the circumstances surrounding the destruction of the will) should testify in person or by deposition.

Although it is not required by law, the Court prefers to have witnesses to the will testify in person.

The hearing on this matter must be specially set on the Court docket.

When a will cannot be found, there is strong presumption of fact that it was destroyed or revoked by the testator. It is therefore essential that there be facts presented sufficient to convince the Court otherwise.

CHAPTER SEVENTEEN

SALE OF REAL PROPERTY IN DECEDENT'S ESTATES

Legal Authority: TCA 30-2-402 - 30-2-405; 30-2-418; 31-2-103; TRCP 4; TRCP 55.01; Pritchards 899-911.

If personal property in the estate is insufficient to pay debts and expenses, the personal representative, or a creditor whose claim has been duly filed, may file a petition in the court in which the estate is being administered, for the sale of the decedent's real estate, or so much of the land as may be necessary.

Real estate passes at the moment of death directly to the heirs of an intestate estate or to the beneficiaries of a will, unless the will expressly gives the personal representative the authority to sell the real estate.

If a petition to sell realty is filed, all heirs at law (if intestate) or distributees (if testate) must be made parties to the proceeding. Creditors should be notified but do not need to be made a party. Mortgage holders or other encumbrances are to be parties if their interest would be affected by the relief sought.

The petition should specify particularly the names of the creditors, the amounts of the debts or demands of each creditor and the amounts remaining as unpaid, and describe the land to be sold. The petition should also pray for the sale of the decedent's real estate, or a portion of the real estate, that would prove least injurious to the heirs and legal representatives, and be sufficient to satisfy the debts and demands as set out in the petition.

A guardian-ad-litem must be appointed for any minor or disabled person. The guardian ad litem may waive notice but may not waive the rights of the minor or disabled person.

Parties must be served in accordance with T.R.C.P. Rule 4 as in any other case. If any party fails to respond, the petitioner must apply for a default judgment to be entered against the party per T.R.C. P. Rule 55.01.

No notice of insolvency or other notice to creditors need precede the filing of the petition to sell real estate. However, the attorney, before presenting the petition to the judge, must obtain a report from the clerk stating that the personal estate is insufficient for the payment of the debts of the estate, administrative expenses, inheritance taxes, and the estate taxes. The clerk's report must be confirmed by the judge. The clerk shall notify the devisees or heirs and other interested parties that the court will conduct a hearing to determine the advisability of selling real estate and to authorize the sale.

At least one (1) appraisal of a qualified real estate appraiser as to the fair market value of the property should be presented to the court. The guardian ad litem,

if appointed, may obtain a second appraisal if there is a substantial difference between the proposed sale price and the appraised value.

If upon the hearing, the judge is satisfied that the estate is insolvent, or that the sale of real estate is necessary, the Judge may order the sale of the real estate in whole or in part. The sale may be by public or private means and the court may direct or approve the terms and conditions of the sale.

The statute does not require an order of reference but it can be very helpful in some cases. This is particularly true if one of the parties should contest the sale or if there is some question as to the amount of unpaid debts.

If the real estate is located in Tennessee but outside the county of administration, the sale shall be held in the county in which such land lies. A certified copy of the order confirming the sale or a deed should be recorded in the Office of the Register of Deeds in the county where the real estate is located and the expense of the sale and the costs of recording may be charged to the estate.

CHAPTER EIGHTEEN

REQUIREMENT REGARDING TENNCARE

Release from TennCare

If the decedent is over fifty-five (55) years of age, a release from the bureau of TennCare must be submitted to the clerk evidencing one of the following: (T.C.A. 71-5-116(c)(2)(A)-(C))

1. Payment of all medical assistance benefits, premiums, or other costs due from the estate under law;
2. Waiver of the bureau's claims; or
3. A statement from the bureau that no amount is due.

Duties of Personal Representative

T.C.A. (71-5-116(d)(1)(B) and (D))

1. The personal representative, within sixty (60) days of the date of issuance of letters testamentary or letters of administration, shall notify the bureau of TennCare of the death of any individual over the age of fifty-five (55) in a format to be specified by the bureau. (T.C.A. 71-5-116(d)(1)(D)). A copy of the TennCare form can be found in the appendix, as well as on the Bureau of TennCare's website.
2. The personal representative shall provide the notice to creditors specified in (T.C.A. 30-2-306), to the Bureau of TennCare, if the decedent was a TennCare recipient.
3. If the notice to creditors is required to be provided as set forth above, an affidavit shall be filed with the court, by the personal representative, pursuant to (T.C.A. 30-2-301(b)(3)).

TennCare's Intent to Recoup

It is the legislative intent of subdivision (T.C.A. 71-5-116(d)(1)), that after the date of death, the bureau of TennCare strive vigorously to recoup any TennCare funds expended for a decedent during the decedent's lifetime. (T.C.A. 71-5-116(d)(2)). Exceptions to this intent are when there is a surviving spouse or a minor child. Or in the event that a child, who before or after reaching the age of majority, is blind or permanently disabled, and if TennCare and the personal representative agree, or if the court finds that such repayment would constitute an undue hardship to the blind or disabled child. (T.C.A. Sec. 71-5-116(c)(1)).

TennCare Request for Release Form

The form and the form's instructions shall be available in the office of any clerk exercising probate jurisdiction, as well as available on the bureau of TennCare's website. (T.C.A. 71-5-116(e))

Classification of TennCare Claim

T.C.A. 30-2-317(a), sets forth the classifications of claims regarding the priority of payments. Claims for TennCare fall under the third class, pursuant to (T.C.A. Sec. 71-5-116(f)). If the bureau of TennCare receives a notice to creditors as defined, a claim must

be filed with the court or is forever barred within twelve (12) months of the decedent's date of death. If TennCare does not receive notice to creditors as defined, a claim must be filed with the court within forty-eight (48) months from the date of the decedent's death. If a claim is not filed by the bureau of TennCare pursuant to the aforementioned avenues, then the requirements of T.C.A. 71-5-116(c)(2) do not apply.

CHAPTER NINETEEN

MISCELLANEOUS PROVISIONS

Payment of Bank Account by Bank Under \$15,000.00

Legal Authority T.C.A. 45-2-708

Payment, when no executor or administrator qualifies, notwithstanding the provisions of T.C.A. 30-2-317, where no executor or administrator of a deceased depositor has qualified and given notice of such person's qualifications to the bank, the bank may, in its discretion, and at any time after thirty (30) days from the death of the depositor, pay out of all accounts, maintained with it by the depositor in an individual capacity, all sums which do not exceed ten thousand dollars (\$15,000.00) in the aggregate:

- (1) To the executor named in any will known to the bank; or
- (2) In the absence of knowledge of a purported will naming a surviving executor to:
 - (A) A creditor for expenses of the funeral;
 - (B) A creditor for the expenses of the last illness;
 - (C) The surviving spouse; and
 - (D) The next of kin.

In the case of conflicting claims, the order of priority shall be that set out in T.C.A. 45-2-708.

(a) The receipt of any guardian, administrator or executor, duly appointed or qualified by the courts of this state, or any other state, acknowledging the payment or transfer of funds, standing in the name of the person whose estate such fiduciary represents, in the form of deposits in banking institutions, shall be a good and sufficient acquaintance for such payment or transfer and shall constitute a valid defense in favor of the banks against the demands or claims of all parties.

(b) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

Bank May Honor Check/s of Decedent under \$10,000.00

Legal Authority: TCA 45-2-711

Notwithstanding TCA 30-2-317, where no executor or administrator of a decedent has qualified and given notice of the person's qualifications to the bank, or where the qualified executor or administrator has been discharged and a check or checks made payable to the decedent is presented to the bank for payment or collection, the bank may, in its discretion, and at any time after ninety (90) days from the death of the deceased, negotiate or send for collection and pay out the proceeds of one or more checks made payable to the deceased, whether written or electronic, all sums that do not exceed ten thousand dollars (\$10,000.00) in the aggregate:

- (A) To the executor named in any will known to the bank whether probated or not;
- (B) To any personal representative appointed by a court whether

- Active or discharged; or
- (C) In the absence of knowledge of a purported will naming a surviving Executor or an administrator to the:
- (i) surviving spouse
 - (ii) next of kin

Deposit of Will with Probate Court

A testator who is living or some person authorized by the testator in writing by an order, duly proved by oath of a subscribing witness, may deposit his/her will with the clerk of the Probate Court by following the procedure set out in T.C.A. 32-1-112.

Delivery of Will to Clerk

Legal Authority T.C.A. 32-1-113

Mailing or delivery of will to personal representative or clerk of court.

- (a) any person or corporation who has possession of or discovers a written instrument purporting to be the last will and testament of a decedent shall mail or deliver that instrument to the personal representative named therein as soon as the person or corporation has knowledge of the death. A photographic copy of such instrument shall be mailed or delivered to the clerk of the court having probate jurisdiction in the county of the decedent's residence.
- (b)
 - (1) If the personal representative, or personal representative's address, is not known, is deceased or is not eligible to serve;
 - (2) If the instrument does not name a personal representative;
 - (3) If the personal representative declines to serve; or
 - (4) If it appears that there is no estate that will require administration; then the person having possession of the original instrument shall mail or deliver it to the clerk.
- (c) The receipt by the personal representative or the clerk shall relieve such person of further responsibility as to possession of the instrument.
- (d) The clerk of the court shall have no responsibility to perform any acts regarding the probate of the will and shall not accept any claims for filing against the estate unless and until such time as the personal representative or other interested party files proper pleadings to initiate such action.

Death Taxes:

1. There is no State Inheritance on deaths that occur on or after January 1, 2016.
(TCA 8-67-425 removes requirement in part four)
2. Estates wherein the decedent died on or before December 31, 2015:
 - A. Notice to Commissioner (Check with Commissioner of Revenue as it has been stated that they are not processing those forms any longer.)

The probate clerk or Clerk and Master of the county wherein an estate is administered shall forward by mail upon the issuance of letters of administration (or testamentary) the "Notice to Commissioner" on the form provided by the Tennessee Commissioner of Revenue, which

includes the name and date of death of the decedent, the decedent's address at the time of death, the name and address of the executor, administrator, or trustee qualified, together with the executor's, administrator's or trustee's estimate of the gross value of the estate (T.C.A. sec. 67-8-406(a)). For this service, the clerk shall charge the fee allowable under the statute T.C.A. Sec. 67-8-406(b). Violation of the duty to forward Notice to Commissioner shall be subject to a penalty of between \$100 - \$500. (T.C.A. Sec. 67-8-406(c))

B. Waiver

If the gross estate of a decedent does not exceed \$100,000 on deaths on or before December 31, 2013; \$1,000,000 on deaths in the year 2014 or \$2,000,000 on deaths in the year 2015(TCA 67-8-409(g)(1)); and if the decedent did not make any gifts in excess of the maximum single exemption allowable free of tax under T.C.A. Sec. 67-8-104, in his/her lifetime, the court may waive the filing of an inheritance tax return upon a statement to such effect by the personal representative under penalty of perjury. T.C.A. Sec. 67-8-409(g)(1)

C. Federal Estate Tax

The probate clerk is not under a duty to advise the personal representative of the possibility of his liability for federal estate taxes. Nor is the clerk under a duty to check the accounting before final settlement to see whether federal estate taxes are in any way considered.

D. Estimating the Tax for Bond Purposes

As stated in Chapter Four, Letters and Bond, the Probate Court sets a sufficient amount for the personal representative's bond to cover any inheritance tax due or owing the state. T.C.A. Sec. 67-8-409

CHAPTER TWENTY

DISPOSAL OF DORMANT CASES

Authority: T.C.A. 30-2-324 (eff. 7/1/11)

The State Legislature has provided Courts with a method by which to clear dormant probate cases from the active docket by dismissing them without prejudice IF:

- 1) No order of disposition has ever been entered;
- 2) The case has been open for a period of time in which disposition could have occurred, but in no event less than 18 months from the order opening the estate; and
- 3) The administration of the estate remains incomplete.

Notice must first be sent to the last known address of the Personal Representative of the estate, the attorney for the estate, and any beneficiaries of the estate. (If TennCare has filed a claim against the estate, it is also a good idea to send a copy of the notice to them.)

After allowing a reasonable amount of time for any answer or response to the notice to be filed, the Court may enter an Order, without liability to the clerk of the county of administration, dismissing the probate case without prejudice.

A dismissal pursuant to this section shall operate only to close the administration and not to invalidate any previous Order of the Court in the proceeding.

PROBATE STATUTES

Absentees' Estates (UAEDAPL)	30-3-101 thru 30-3-114
Abuse, Adult, duty to report	71-6-103(b)
Accountings—decedents estates	30-2-601 and 30-2-701, et seq
Acts of Congress	28 USC 1738, 1739 & 32-5-107
Administrator Ad Litem	30-1-109
Administrator Appointment at Discretion of Judge	30-1-305
Advancements	31-5-102
Advances for Property Maintenance Expenses	30-2-323
Affidavit of Witnesses to Will	32-2-110
Bank may pay directly or cash check without probate	45-2-708, 45-2-711, 45-3-514, 45-4-
405	
Balance paid (to sell item bequeathed to heir) after claims	32-3-111
Bond, Decedents' Estates	30-1-201 & 35-50-107 & 35-50-111
Bonds, in a will contest	32-4-101 and 32-4-102
Claims Against Estate; jury demand on claims	30-2-306 to 319; 30-2-313
Clerk's citation for failure to settle	30-2-602
Conservatorships	34-1-101 to 131; 34-3-101 to 109
Conservatorship-Expunction and transfers	34-1-124; 34-8-301 to 34-8-402
Conservatorship Bond waiver by Judge	34-1-105
Contempt of Court	29-9-101 to 105
Contest of Will and statute of limitations	32-4-101 to 109
Continuance of Business (9 Months)	30-2-322
Dead Man's Statute	24-1-203
Death of Class Member Before Time of Enjoyment (Anti-lapse)	32-3-105
Declaration of Right of Fiduciaries	29-14-105
Declination to Serve	30-1-112 (a)
Descent & Distribution (Intestate Succession)	31-2-104
Disclaimer	31-1-103
Distribution of Balance of Estate	30-2-701 to 704
Divorce as Affecting Rights	31-1-102 & 32-1-202(4)
Dormant Probate Disposal	30-2-324
Elective Share	31-4-101 to 105
Employers & Creditors May Pay \$10,000	30-2-103
Escheat	31-6-101 to 122
Exception to Accounting	30-2-607
Exception to Claims	30-2-313 to 315
Execution of Wills	32-1-101 to-113
Executor/ Administrator Liability	67-8-423
Exempt Property-Allowances to family	30-2-101
Expunction of Record (Guardianship or Conservatorship)	34-1-124
Extraordinary Process, Injunctions	29-1-101 & TRCP 65
Failure to Account	34-1-111, 30-2-613
Felonious Killing, Forfeiture of inheritance	31-1-106
Felony Language in Petition and Oath	30-1-117(a)(10) & 30-1-111
Filing Claims Against Estate-4 Months	30-2-306 to 307
Financial Records Privacy Act	45-10-101 to 118
Foreign Wills, Execution and Recording, and un-probated	32-1-107 & 108, 32-5-101 to 110
Foreign Wills from another country Hague convention?	
Fraudulent Conveyance to Defeat Spouse's Share	31-1-105
Gift to Minor's Act (TUTMA)	35-7-101 to 126
Guardianships (and continuation past majority)	34-1-101 to 131; 34-2-101 to 106
Guardianship transfers	34-8-301 to 34-8-402
Holographic Wills	32-1-105 & 32-1-110

Homestead	30-2-201 & 26-2-301;TN Cns. Art XI,
ss 11	
Insolvent Estate	30-5-101 thru 30-5-105
Insurance Free from Claims or Debts	56-7-201
Intestate Succession (order of descent)	31-2-104
Inventory	30-2-301(a)
Joint Accounts	45-2-703 & 45-2-704
Joint & Mutual Wills	32-3-107(b)
Jurisdiction of Probate Court	16-16-107, 16-16-201, 16-16-202
Jurisdiction for Chancery to Appt Admin	30-1-301
Life Insurance not subject to debts	56-7-201
Living Wills (TRNDA)	32-11-101 to 112
Lock Box	45-2-901 & 67-8-418
Lost or Spoliated Wills	32-4-106; Pritchard ss 51
Muniment of Title of Real and Personal Property	32-2-111
Non-Resident Fiduciary	30-1-116 and 35-50-107
Notice of Accounting/waiver	30-2-603
Notice to Commissioner obsolete after 01/01/2016	67-8-425
Notice to Creditors (4 Months)	30-2-306
Notice to Personal Rep. of Claim Filed	30-2-313 (a)
Notification of Probate Proceedings & Inventory	30-2-301(b)(1) & 30-2-301
Notification about letters and TNcare, Affidavits of PR	30-2-301(b)
Nuncupative Will	32-1-106 & 32-2-106
Oath of PR before a notary; conservator	30-1-111; 30-3-207
Parent-child relationship	31-2-105
Partition Suits	29-27-101 to 219
Payment of Claims Priority	30-2-317 to 319
Pending Lawsuits (order of reviver)	30-2-320
Petition to Open Estate	30-1-117
P.O.D. Accounts	45-2-704
Powers of Executor Incorporated by Reference	35-50-110
Preference in Qualification or Creditor to Qualify	30-1-106 & 30-1-301
Priority of claims	30-2-317
Proof of Will	32-2-104 & 32-2-110
Public Guardianships for Elderly	34-7-101 to 105
Real Property,Interest to vest	31-2-103
Receipt & Waiver, Closing Estate	30-2-601; 30-2-707
Remove Disability of Minority	29-31-101 to 29-31-105
Reopening of bidding (10%Rule)	35-5-110
Residence of Fiduciaries	35-50-107
Residences (2) of Decedent	32-2-101 & Pritchards- 329-7 th
Edition	
Revocation of Will	32-1-201
Safe Deposit Boxes	67-8-418 & 45-2-901
Sale of Decedent's Personal and Real Property	30-2-303, 30-2-401,403, 406; 30-2-
418	
Scire Facias Against Estate Debtors	30-2-706
Service of Process (non-resident representative)	30-1-104
Simultaneous Death Act (USDA)	31-3-101 to 107; 31-3-120
Small estates, Administration of	30-4-101 to 105
Solemn Form Probate	Pritchard ss 342-350
State Limitations on Payment of costs	8-21-401 (l) & 8-21-901 (b)

Tenn Care (Lien) & form request & Notice to court	71-5-116 (c) (2); 71-5-116 (e); 30-117
Treasurer of State to Receive (see Escheat at 31-6-101)	30-2-702 & 66-29-101
V.A. Guardianship (UVGA)	34-5-101 to 122
Wills (2)	Pritchards-258-7 th Edition
Will Deposited with Court	32-1-112
Wrongful Death Proceeds	20-5-106
Year's Support, Wages owed the decedent	30-2-102, 30-2-103

PROBATE FORMS

- Affidavit for Small Estate
- Waiver of Bond
- Request for Waiver 45 Days
- TennCare Release
- Probate Information Request Form

Chancery Court Lincoln County Fayetteville, Tennessee	AFFIDAVIT FOR SMALL ESTATE LIMITED LETTER OF AUTHORITY Page 1 of 2	Case Number PR _____
IN RE: _____, Deceased		

The deceased, herein referred to as "Decedent", age _____, died on _____, _____ in _____ County, State of Tennessee Decedent's last residence was _____ County, Tennessee, as evidenced by a copy of the death certificate which is being filed with this affidavit.

_____ The Decedent left no Will _____ The Decedent left a Will which does not require administration by the Court, but is lodged for safekeeping pursuant to TCA 32-1-112.

The Decedent died owning an interest in personal property, including all life insurance policies payable to the Decedent's estate, not to exceed the aggregate statutory amount of \$50,000.00 as follows:

Items	Value	Location and Possession
_____	_____.	_____
_____	_____.	_____
_____	_____.	_____
_____	_____.	_____
Total Value	_____.	

The Decedent left the following unpaid debts at death (Attached additional sheet if necessary and see TCA 30-4-104(c) for payment):

Creditor	Amount	Address
_____	_____.	_____
_____	_____.	_____
_____	_____.	_____
_____	_____.	_____

- ☐ Bond must be posted in the amount of \$_____.
- ☐ Bond is excused:
- ☐ Affiant is the sole heir of the decedent's estate.
 - ☐ Each person who is an heir of the decedent is an adult and has consented to waive the affiant's bond as evidenced by each's signed, acknowledged agreement to 'waive' bond which is filed along with this affidavit.
 - ☐ Affiant is a bank excused from bond by TCA §45-2-1005.

The following are the names and addresses of all heirs of the deceased which the affiant(s) is (are) obligated to notify at their last known address (Attach additional heirs on a separate sheet):

Name	Address	Age	Relationship
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Your affiant(s) is(are) willing to collect and preserve all assets of the estate, including the removal of any personal property from a property leased by the decedent and cancellation of insurance policies that are no longer applicable due to the decedent's death.

Your affiant(s) acknowledges that the decedent did not have an interest in any real property.

Your affiant(s) acknowledge liability to TennCare, if applicable, to the extent of the value of the personal property.

Your affiant(s) further acknowledges that the affiant and the sureties, if any, will automatically be discharged on the first anniversary of the filing of the affidavit.

Your affiant(s) further evidences by signature hereto that, subject to penalty of perjury, the information contained herein is not false or misleading and the affiant is not prohibited from filing affidavit because of having been sentenced to imprisonment in a penitentiary as set forth in § 40-20-115 or otherwise. The affiant is aware of and mindful of all duties imposed upon him in Tennessee Code Annotated §30-4-101 et seq.

Date: _____

Affiant

Affiant Address: _____

Sworn to and subscribed before me on _____.

My Commission Expires: _____.

Clerk or Notary Public

I, _____, Clerk for the _____ Court of _____ County, Tennessee, certify that this is a court of record; that this is a true, full and correct copy of the Affidavit for Small Estate Limited Letter of Authority filed in this Court; that this Affidavit is still in full force and effect as of this date; and that the original of this Affidavit is on file in the office of the _____ for _____ County, Tennessee.

Date: _____

Clerk or Deputy Probate Clerk

Legal Authority: TCA §30-4-101 et seq.

7/1/2022

Note: Tennessee Code Annotated 30-4-104 states that every person indebted to the decedent's estate, having possession of any personal property belonging to the estate, or acting as registrar or transfer agent of any shares of stock, bonds, notes, or other evidence of ownership, indebtedness, or right belonging to the decedent's estate must be furnished with a copy of the affidavit by the affiant, duly certified by the clerk of the court. Upon receipt of the copy of the affidavit and demand of the affiant, each person furnished with a copy of the affidavit **shall** pay, transfer, and deliver to the affiant: (1) all indebtedness owing by the recipient and (2) other property in possession of or subject to registration or transfer by the recipient.

IN THE CHANCERY COURT OF _____ COUNTY, TENNESSEE:

IN RE: _____

NO. _____

SMALL ESTATE AFFIDAVIT-LIMITED LETTER OF AUTHORITY
FOR _____

WAIVER OF BOND

Comes now, _____, an heir at law or devisee under the last will and testament for the above referenced decedent, hereby agree to waive the requirement of a fiduciary bond for the small estate limited letter of authority and further agree that they should be allowed to file the same without posting the aforementioned fiduciary bond.

This _____ day of _____, 2022.

Heir

Sworn to before me this _____ day of _____, _____.

Clerk or Notary Public

My commission expires: _____

IN THE CHANCERY COURT OF LINCOLN COUNTY, TENNESSEE:

IN RE: _____

NO. _____

SMALL ESTATE AFFIDAVIT-LIMITED LETTER OF AUTHORITY
FOR _____

REQUEST FOR WAIVER OF 45 DAYS

Comes now, _____, pursuant to T.C.A. 30-4-103(c), and requests that the 45 day waiting period required to file a small estate affidavit limited letter of authority be reduced for good cause shown the court.

This _____ day of _____, _____.

Affiant

Sworn to before me this _____ day of _____, _____.

Clerk or Notary Public

Approved for filing _____



RFR PROCESSING UNIT
310 GREAT CIRCLE ROAD, 3W
NASHVILLE, TN 37243
Phone: (615) 741-0636, Fax (615) 413-1941
Email: RFR.TENNCARE@TN.GOV

**REQUEST FOR RELEASE
INCLUDE A DEATH CERTIFICATE**

**Deceased
Person's
Name:**

First

Middle

Last

Person Submitting Request

Name:

Address:

Street Address

Suite #

City

State

Zip Code

Phone:

Email:

Information About Probate Court Case

Has a probate court case been filed? If yes, check the box and fill out the rest of this section. ☐

County the case was filed in: _____ Date the case was filed: _____

Court Case Number: _____

Request that TennCare Waive or Delay Recovery of Claim

Are you asking TennCare to waive (drop) or delay recovery of its claim? If yes, check any boxes that apply. See the instructions at the bottom of this page for the other documents you must send us with this page.

Deceased is survived by a child under 21 ☐ Deceased had long-term care insurance ☐

Deceased is survived by a child that the Social Security Administration determined to be blind or permanently and total disabled. ☐

Deceased is survived by a spouse ☐ Surviving Spouse's SSN _____

Surviving spouse's full name _____

Information about Trust

Is the deceased the beneficiary of a trust with a Medicaid payback provision? If yes, check this box and list the trustee's contact information below. Please provide a copy of the trust. ☐

Name:

Address:

Street Address

Suite #

City

State

Zip Code

Phone:

Email:

INSTRUCTIONS:

1. Email, mail or fax this completed page and the deceased's death certificate to the RFR Processing Unit.
2. If the deceased is survived by a child under 21, also send us a copy of the child's birth certificate.
3. If the deceased had long-term care insurance, also send us a copy of the policy documents with this page.
4. If the deceased was survived by a blind or disabled child, also send us a copy of the child's birth certificate and the determination/award letter from the Social Security Administration.
5. If the deceased is the beneficiary of a trust with a Medicaid payback plan, also send us a copy of the trust.

Form: RFR 2021-2

- Do you need help talking with us or reading what we send you?
- Do you have a disability and need help getting care or taking part in one of our programs or services?
- Or do you have more questions about your health care?

Call us for free at 866-389-8444. We can connect you with the free help or service you need. (For TRS call: 711)

We obey federal and state civil rights laws. We do not treat people in a different way because of their race, color, birth place, language, age, disability, religion, or sex. Do you think we did not help you or you were treated differently because of your race, color, birth place, language, age, disability, religion, or sex? You can file a complaint by mail, by email, or by phone. Here are two places where you can file a complaint:

<p>TennCare Office of Civil Rights Compliance</p> <p>310 Great Circle Road, Floor 3W Nashville, Tennessee 37243</p> <p>Email: HCFA.Fairtreatment@tn.gov Phone: 1-855-857-1673 (TRS 711)</p> <p>You can get a complaint form online at: http://www.tn.gov/assets/entities/tenncare/attachments/complaintform.pdf</p>	<p>U.S. Department of Health & Human Services, Office for Civil Rights</p> <p>200 Independence Ave SW, Rm 509F, HHH Bldg., Washington, DC 20201</p> <p>Phone: 1-800-368-1019 (TDD): 1-800-537-7697</p> <p>You can get a complaint form online at: http://www.hhs.gov/ocr/office/file/index.html Or you can file a complaint online at: https://ocrportal.hhs.gov/ocr/portal/lobby.jsf</p>
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<p align="center">Do you need free help with this letter?</p> <p align="center">If you speak a language other than English, help in your language is available for free. This page tells you how to get help in a language other than English. It also tells you about other help that's available.</p>	
Spanish:	<p>Español</p> <p>ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 866-389-8444 (TRS:711).</p>
Kurdish:	<p>کوردی</p> <p>ناگداری: ئەگەر بە زمانی کوردی قەسە دەکەیت، خزمەتگوزاریەکەنی یارمەتی زمان، بەخۆزایی، بۆ تۆ بەردەستە. پەیوەندی بە 866-389-8444 (TRS:711) بکە.</p>
Arabic:	<p>عربى</p> <p>وظائفنا اذا متكلمنا ربيكنا اتمنحك خدمة عالمنا وبتلغا رفقمتك لئلا انجلم. اتصل بمقر: 866-389-8444 (TRS: 711) مقر فضاء صلبا و ملوكا</p>
Chinese:	<p>繁體中文</p> <p>注意：如果您使用繁體中文，您可以免費獲得語言援助服務。請致電866-389-8444 (TRS: 711)。</p>
Vietnamese:	<p>Tiếng Việt</p> <p>CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 866-389-8444 (TRS:711).</p>
Korean:	<p>한국어</p> <p>주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 866-389-8444 (TRS:711)번으로 전화해 주십시오.</p>
French:	<p>Français</p> <p>ATTENTION : Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 866-389-8444 (TRS:711).</p>
Amharic:	<p>አማርኛ</p> <p>ማሳሰቢያ: የሚናገሩት ቋንቋ አማርኛ ከሆነ የትርጉም እርዳታ ድርጅቶች በእነዚህ ስልኮች ተዘጋጅተዋል፡ ወደ ሚከተለው ቁጥር ይደውሉ 866-389-8444 (መስማት ለተሳናቸው: TRS:711) .</p>
Gujarati:	<p>ગુજરાતી</p> <p>સુચના: જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 866-389-8444 (TRS:711) .</p>
Laotian:	<p>ລາວ</p> <p>ໂປດຊາບ: ຖ້າວ່າ ທ່ານເວົ້າພາສາ ລາວ, ການບໍລິການຊ່ວຍເຫຼືອດ້ານພາສາ, ໂດຍບໍ່ແຈ້ງຄ່າ, ຄວນມີພ້ອມໃຫ້ທ່ານ. ໂທ 866-389-8444 (TRS:711).</p>
German:	<p>Deutsch</p> <p>ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 866-389-8444 (TRS:711).</p>
Tagalog:	<p>Tagalog</p> <p>PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyong tulon sa wika nang walang bayad. Tumawag sa 866-389-8444 (TRS:711).</p>
Hindi:	<p>हिंदी</p> <p>ध्यान दें: यदि आप हिंदी बोलते हैं तो आपके लिए मुफ्त में भाषा सहायता सेवाएं उपलब्ध हैं। 866-389-8444 (TRS:711) . पर कॉल करें।</p>
Serbo-Croatian:	<p>Srpsko-hrvatski</p> <p>OBAVJEŠTENJE: Ako govorite srpsko-hrvatski, usluge jezičke pomoći dostupne su vam besplatno. Nazovite 866-389-8444 (TRS- Telefon za osobe sa oštećenim govorom ili sluhom: 711).</p>
Russian:	<p>Русский</p> <p>ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 866-389-8444 (телетайп: TRS:711) .</p>
Nepali:	<p>नेपाली</p> <p>ध्यान दिनुहोस्: तपाईंले नेपाली बोल्नुहुन्छ भने तपाईंको निम्ति भाषा सहायता सेवाहरू नि:शुल्क रूपमा उपलब्ध छ । फोन गर्नुहोस् 866-389-8444 (टिटिवाइ: TRS:711)</p>
Persian:	<p>فارسی</p> <p>توجه: اگر به زبان فارسی گفتگو می کنید، تسهیلات زبانی بصورت رایگان برای شما فراهم می باشد. با 866-389-8444 (TRS:711) تماس بگیرید.</p>

PROBATE INFORMATION REQUEST FORM

Appointment Date and Time with Clerk:

Name of Deceased: _____

Date of Death: _____ Age at Death: _____ Will: _____

Excused or Waived from: Bond _____ Inventories _____ Accountings _____

Title of Personal Representative _____

If Testate, is will Self Proving _____ Amount of Bond, if not waived: _____

Personal Representative: _____
(If a nonresident, the application for Secretary of State must be filed with Petition)

Address: _____

Attorney: _____

Costs for Probate

Clerk and Master's Office - \$344.50

The Elk Valley Times - \$118.00

Extra Letters - \$5.50 each

Out of State Fiduciary - \$10.00

Number of Extra Letters Needed: _____

*A copy of the petition must accompany this form.

RECORDS MANAGEMENT



County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

August 11, 2022

Records Management

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

Records Management

Reference Number: CTAS-197

Records management is an often overlooked issue in both public and private sector offices; however, this task is becoming more vital everyday. In this information age, everyone—from the average citizen to the largest corporation or government—must find a way to preserve, manage, store, and organize their records. Whether it is a neighbor finding this month's phone bill and getting it paid on time, or General Motors keeping accurate wage and hour records on its employees, everyone needs a system for tracking documents and the information in them. Good managers will expend significant time and effort in planning and making decisions about their labor force and their facilities. Few take the time to think about their records. The records of an office are often as essential to its operation as its employees, facilities, and equipment. New employees can be hired and trained to replace those who leave; new office space and equipment can be leased or purchased to replace anything that is lost, even in the worst disasters. If your records are lost or destroyed, however, there is nowhere to go to purchase a replacement, and they often cannot be recreated.

For certain county officials, like the register of deeds or the clerk of a court, record keeping is one of the central duties and purposes of the office. For others, like highway departments or sheriff's offices, record keeping is incidental to the fundamental purpose of the office—maintaining roads or law enforcement. Nevertheless, these offices must still comply with federal and state statutes that require accurate records regarding the personnel, finances, and other aspects of the office. Good records management practices will benefit both types of offices.

Reasons for Records Management

Reference Number: CTAS-213

Proper records management not only conveys organizational and managerial benefits to an office, but also—for local government offices—it is a vital task, necessary for fulfilling important legal requirements and duties. The following are just a few of the reasons your county should take records management seriously.

Space

In most counties, space is not the final frontier; it is the final battle. It is rare for a county office or courthouse to have all the space it needs. Most local officials would complain that the necessary records of the office are rapidly filling up all available space. Courthouses are bursting at the seams with old records stuffed into basements, storage closets, attics, and other creative locations. For this reason alone, it is important and cost effective for a county to implement a records management program.

Records Serve as a Legal Foundation

In a society of laws, local governments and the citizens they serve are both dependent upon good documentation to demonstrate their legal status. Court orders, marriage licenses, and the minutes of the county commission are just a few examples of important documents that create relationships, establish rights or liabilities, and authorize certain actions. When disputes arise over legal issues, it is important to have good documentation on which to rely. Local governments have an important responsibility to preserve these records. Proper records management will ensure these records are preserved and can be found when needed.

Open Records Requirements

Since government records are generally open to public inspection, the task of managing records becomes even more important and more complicated. The principle of allowing public access to government records, combined with so-called "sunshine laws," which require open meetings, is considered an important check on government and an important defense against corruption in public office and mismanagement of public resources. Unless there is a specific legal exemption that makes a record confidential, the public has the right to inspect and get a copy of the records of government agencies. So you must as a county official, not only preserve and keep records, you must also allow public access to these records for inspection. Unless your records are well organized and well protected, you may not be able to comply with public requests for information, undermining public confidence in government and hindering your office's relationship with the citizens it serves.

Historical Preservation of Documents

Counties play a vital role in preserving our nation's history. The documents and records of local governments give us insights into the lives of our ancestors and the circumstances of their times. Counties with too many records and too little space for the records end up putting them wherever they can. In

many cases, these storage areas do not adequately protect the records from the elements. Heat, moisture, mildew, insects, and vermin can quickly render records useless. The county and its citizens may be losing important information as well as a part of their past and their heritage. With proper records management, the important records are preserved, the less essential records are destroyed when no longer useful so they do not take up all the available space, the records are catalogued and organized so officials and the public can access them, and records are stored under proper conditions to enable long-term preservation.

Legal Issues

Reference Number: CTAS-212

County governments, and all the secondary offices, boards, committees, and commissions in a county, are creations of the law. They find their origin in either the Tennessee Constitution or statutory law. It is a long established principal in Tennessee law that counties can only do those things that the law authorizes them to do. Therefore it is vitally important to any operation of county government to know what the laws are that authorize the county to perform a function and to know what the laws are that place limitations around that authority. There are laws that require counties and county officials to keep records, and there are laws that govern how a county manages its records.

Laws that Require Records to Be Kept

Reference Number: CTAS-1144

Not every record in a government office has a corresponding statute or regulation requiring that record be kept. Many records are generated simply as an ordinary course of business without any legal authority mandating their creation. But the creation and preservation of certain other records are required by specific laws. The laws affecting individual records are referenced in the retention schedules.

Federal Laws and Regulations

County officials should be aware that federal laws and regulations require them to keep certain records. This is particularly true of payroll information and other employment-related records. Most of the laws regarding how we hire, fire, compensate, and treat employees are generated at the federal level. The Family and Medical Leave Act, the Fair Labor Standards Act, the Occupational Safety and Health Act are just a few of the laws that place certain burdens on employers to keep records regarding their employees. These statutes also generate a whole other layer of federal regulations that govern the implementation and enforcement of the acts. In addition to personnel issues, federal laws and regulations also touch such diverse topics as student records and voter registration. Laws passed by the U.S. Congress are codified in the United States Code (U.S.C. or U.S.C.A. for United States Code Annotated). The massive amounts of rules and regulations generated by the different federal agencies are primarily found in the Code of Federal Regulations (C.F.R.).

State Laws and Regulations

Since county governments are instrumentalities of the state, most of the laws regarding what records need to be kept by county offices and how those records should be managed are found in the Tennessee Code Annotated (T.C.A.). As with the federal government, the state of Tennessee also has a set of rules and regulations promulgated by state agencies, boards, and commissions which are published by the secretary of state and known as the Official Compilation Rules and Regulations of the State of Tennessee.

The duties of most county officials can be found spelled out in Title 8 of the Tennessee Code Annotated. For most offices, a requirement is included in the duties of the office to keep and preserve specific types of records. Certain county offices, such as the register of deeds, the clerks of the various courts of the county, and the county clerk, have a primary function of record keeping. The proper and efficient performance of these duties is necessary not only for the continued operation of the county government, but also for the preservation of order in our society. Without them, our criminal justice system, our civil courts, and our rights of property ownership would be thrown into chaos. But even offices without a primary record keeping function are required to keep records.

Even though county officials may change with every election, the offices themselves must maintain a level of continuity. To ensure this, the responsibility for keeping and turning over the records of county offices was specifically addressed in the statutes requiring county officials to be bonded. Part of what is insured by the bond of an official is the fulfillment of a duty to "...faithfully and safely keep all records required in such principal's official capacity, and at the expiration of the term... turn over to the successor all records

and property which have come into such principal's hands...".^[1] Failure to do so can result in recovery against the insurance company or sureties on the bond who may in turn proceed against the official in his or her individual capacity for subrogation of the claim. It is the solemn obligation of each county official to act as the legal custodian of the records of that office, to provide for their security and care, and to turn them over in good order to his or her successor.

[1] Bayless v. Knox County, 286 S.W.2d 597 (Tenn. 1955).

Laws that Govern How You Manage Your Records

Reference Number: CTAS-1145

Good Record Keeping as a Bedrock of Law and Government

If you ever thought the way we do things seems to have come from the dark ages, you were right. Some practices of record keeping in government offices, particularly certain local government offices, are literally ancient. The importance of keeping accurate records of property transactions and legal proceedings is a bedrock of English law and goes back a thousand years. Laws that require the recording of documents in "well bound books," the necessity of having a written record to show property ownership, the creation of specific offices to keep these records all go back to the Middle Ages. Up until the advent of the computer, we had been doing things pretty much the same way they had been done since the 13th century. Even today, some of the laws in our Tennessee code regarding the records of the register's office and the offices of the clerks of court retain elements of this language from more than 700 years ago. Something does not last that long without there being a good reason. Basic rights that we take for granted, such as the rule of law and the sanctity of private property, are impossible without a good, durable record keeping system. All this should impress the Tennessee county official that he or she is the inheritor of a great and solemn tradition of responsible record keeping. Generations of clerks, registers, and officials before them have discharged this public trust and, hopefully, passed the records on to you in good shape.

Basic Record Keeping Statutes

Both the older state laws on records management and their more modern counterparts are found primarily in Title 10, Chapter 7 of the Tennessee Code Annotated. Parts 1 and 2 of that chapter contain a number of statutes about preserving, transcribing, and indexing records. The statutes require the county to "procure for the register's office well-bound books for the purpose of registering therein such instruments of writing as are required by law to be registered..."^[1] Among other things, the laws direct how to transcribe information from books that have been "damaged or mutilated by fire or otherwise,"^[2] require the county to appropriate money to rebind books when necessary,^[3] and designate how the clerks of courts and the register are to properly index the books.^[4] As was discussed earlier, the county official can be held liable for failure to safely keep the records of his or her office. An exemption is granted here relieving an official of liability during the time record books are out of the custody of the county clerk, clerk and master, circuit court clerk, or register for the purpose of having books rebound.^[5]

Not all of our records statutes are steeped in the past. Although many of the laws found in these parts seem headed the way of the dinosaur, there are some that point to the future. One of these newer, more progressive statutes authorizes maintaining any information required to be kept by a government official on a computer or on removable computer storage media instead of bound books or paper if certain standards are met.^[6] Another authorizes county officials to provide computer access and remote electronic access to information maintained on computer media in the office.^[7] A third authorizes the register to maintain all indices required of the office on a computer instead of index books.^[8] When granting new authority to adapt to modern technology, our state legislature has been cautious. All of these statutes condition the use of electronic media on a number of safeguards and restrictions.

The State Public Records Commission

Part 3 of Chapter 7 of the Tennessee Code, Title 10, establishes the State Public Records Commission and designates the Records Management Division of the Department of General Services as the primary records manager for all state government records.^[9] Currently, these entities do not take jurisdiction over county government records, but they can be looked to as examples for proper records management and preservation. There are similarities between the responsibilities and powers of the State Public Records Commission and the county public records commissions that have jurisdiction over county records. The county public records commission is vital to any records management program for county governments.

- [1] T.C.A. § 10-7-102.
- [2] T.C.A. § 10-7-104
- [3] T.C.A. § 10-7-105.
- [4] T.C.A. § 10-7-201, et seq.
- [5] T.C.A. § 10-7-120.
- [6] T.C.A. § 10-7-121.
- [7] T.C.A. § 10-7-123.
- [8] T.C.A. § 10-7-202
- [9] T.C.A. § 10-7-301, et seq.

Open Records Requirement

Reference Number: CTAS-1214

All county records must be open for personal inspection by any citizen of Tennessee during business hours of the various county offices. County officials in charge of these records may not refuse the right of any citizen to inspect them unless another statute specifically provides otherwise (T.C.A. § 10-7-503) or they are included in the list of specific records that are to be kept confidential under T.C.A. § 10-7-504 or some other legal authority. Information made confidential by Title 10, Chapter 7 must be redacted whenever possible. T.C.A. § 10-7-503. In the event it is not practicable for a requested record to be promptly made available for inspection, the records custodian shall within seven business days: (i) make the record available; (ii) deny the request in writing stating the basis for the denial; or (iii) furnish the requestor a response form stating the time reasonably necessary to produce such record. T.C.A. § 10-7- 503.

The Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. On October 1, 2008, the Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records. Records custodians are authorized by T.C.A. § 10-7-503 to charge reasonable costs consistent with the schedule. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel. Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions regarding the schedule should be directed to the Office of Open Records Counsel website.

A citizen denied access to a public record is entitled to file a petition for inspection in the circuit court or the chancery court of the county in which the records are located, or in any other court of that county having equity jurisdiction. The county official denying access to the record has the burden of proof to justify the reason for nondisclosure. If the court directs disclosure, the county official shall not be held criminally or civilly liable for the release of the records, nor shall he or she be responsible for any damages caused by the release of the information. If the refusal to disclose the record is willful, the court may assess all reasonable costs involved in obtaining the record, including reasonable attorneys' fees, against the county official. T.C.A. § 10-7-505.

In addition to creating a schedule of charges for records requests, the Office of Open Records Counsel has been charged with the duty to answer questions from and issue advisory opinions to public officials regarding public records. T.C.A. § 8-4-601. This office should be a valuable resource for questions on open records.

County Public Records Commission

Reference Number: CTAS-211

In 1959, the Tennessee General Assembly first made provision in the Tennessee Code for the creation of a county public records commission.^[1] Although the creation of the commission was optional at the time, the organization and responsibilities of the commission under the 1959 law were very similar to what one finds in the state law today. The express purpose of the commission is "to provide for the orderly disposition of public records created by agencies of county government."^[2] While minor revisions and additions to the statutes regarding this commission have occurred over the last few decades, the most significant change in the county public records commission occurred in the mid-1990s, when the legislature amended the law to mandate the creation of this body.^[3] Ever since 1994, every county in Tennessee has been required by law to have a County Public Records Commission.

^[1]1959 Public Chapter 253.

^[2]T.C.A. § 10-7-401.

^[3]1994 Public Chapter 884.

Creation and Membership

Reference Number: CTAS-1146

The commission is required to be composed of at least six members. Three of the members are appointed by the county mayor subject to the confirmation of the county legislative body. Of those three, one appointee is to be a member of the county legislative body, one is to be a judge of one of the courts of record in the county (or the designee of the judge), and one is to be a genealogist. In addition to these appointees, certain county officers automatically become members of the county public records commission by nature of the office they hold. These *ex officio* members include the county clerk (or the designee of the county clerk), county register (or the designee of the register), county historian and, in those counties with a duly appointed archivist, the county archivist. In counties having a technology department or information technology department, the county legislative body may designate the director of such department as an *ex officio* member of the commission, and if so designated, the director or designee of the director shall also serve as an *ex officio* member of the commission. The *ex officio* members remain on the commission for as long as they hold their office. The appointed members of the commission serve until they vacate office, at which time the county mayor appoints a replacement in the same manner as provided above.^[1] Since the state statute mandating the records commission places no limitations on the *ex officio* members, there are no distinctions between the *ex officio* members and appointed members. All members of the County Public Records Commission have the same rights and privileges, including voting rights.^[2] If your county does not have a public records commission or if your records commission has become inactive, it is strongly recommended that you begin taking steps to comply with the law and establish the commission.

Sample resolution for creating a public records commission

^[1]T.C.A. § 10-7-401.

^[2]Op. Tenn. Att'y Gen. No. 98-114 (June 23, 1998).

Organization and Compensation

Reference Number: CTAS-174

The commission is directed to elect a chairperson and a secretary and to keep minutes of all its proceedings and transactions.^[1] Members of the commission are not paid a salary except that any member of the commission who does not already receive a fixed annual salary from the state or the county may receive a per diem of \$25 for each day of actual meeting. All members may be reimbursed for actual necessary expenses incurred in performing the duties of the records commission.^[2] Although active commissions may meet more regularly, the state law requires that the County Public Records Commission meet at least twice each year.^[3]

¹T.C.A. § 10-7-402.

²T.C.A. § 10-7-402.

³T.C.A. § 10-7-402.

Jurisdiction and Authority of the Public Records Commission

Reference Number: CTAS-179

The county public records commission is granted the power to oversee the preservation and authorize the destruction of any and all public records as defined by the law to be within the jurisdiction of the commission.

Those records within the jurisdiction of the county public records commission include—

- All documents, papers, records, books, and books of account in all county offices;
- The pleadings, documents, and other papers filed with the clerks of all courts including the courts

of record, general sessions courts, and former courts of justices of the peace and the minute books and other records of these courts; and

- The minutes and records of the county legislative body.^[1]

Note: Prior to 1999, the County Public Records Commission also technically had jurisdiction over municipal records. As a practical matter, few municipalities were working with the county public records commission to manage their records. Since a legislative change in 1999,^[2] municipal records are no longer within the purview of the County Public Records Commission.

Oversight Over the Disposal and Final Disposition of Records

The most important role of the County Public Records Commission is to provide oversight and make determinations regarding the ultimate disposition of the records of county offices. County governments in Tennessee are not highly centralized. Individual elected officials have a great deal of independence in the management of their own offices. Recognizing this, and realizing the danger of a single official having the sole discretion regarding whether to keep important public records, the state legislature created the county public records commission and provided it with the authority to decide whether county records should be retained or destroyed.^[3] It is the responsibility of the commission to ensure that no county records that need to be preserved are destroyed prematurely and to ensure that original records which have been reproduced into other storage media have been properly duplicated before the originals are destroyed. In working with county officials, the commission should strive to balance this responsibility to protect records against the need to manage records efficiently. Since destroying records is absolutely necessary for keeping the records of an office manageable, the commission should encourage and cooperate with local officials in culling the obsolete and unnecessary records from their offices. There are two primary circumstances where the public records commission may authorize destruction of records. First, the records commission may authorize the destruction of temporary value records and working papers that are no longer needed by county offices and departments through its rules and regulations.^[4] Second, the commission may authorize the destruction of original paper records that must be retained permanently once those records have been successfully preserved in another format.^[5]

Authorizing Transfer of Records

For records commissions that place a premium on the historical preservation of county records, the law provides an alternative to destruction. Once the County Public Records Commission determines that a county office, department, or court no longer needs to retain a record, the commission may provide for transferring the record to another institution instead of destroying it. The records may be placed into the custody of a local or regional public library, a local, regional or state college library, or the county archives, to be preserved for historical purposes.^[6] The transfer of the records should be approved by a majority vote of the commission. At any time after the records are transferred to one of the entities listed above, the commission may, after giving one month's notice to the institution holding the record, transfer the records to another institution. If appropriated by the county legislative body, county funds may be expended by the records commission for the purpose of transferring records to an institution or for the maintenance and preservation of the records.^[7] If your county chooses to transfer records to another institution for storage and preservation, it is recommended that the county enter into a contractual agreement with that entity specifying that it is only keeping them on behalf of the county and that ownership of the records is not being transferred. Rather than transferring the records to a private library or archives, the Tennessee State Library and Archives recommends that a county should establish its own archives or enter into an interlocal agreement with other local governments for the creation of a regional archives. For additional information, see Establishing Archives.

^[1]T.C.A. § 10-7-403.

^[2] 1999 Public Chapter 167.

^[3] T.C.A. § 10-7-401, *et seq.*

^[4]T.C.A. § 10-7-406.

^[5]T.C.A. § 10-7-404.

^[6]T.C.A. § 10-7-414.

^[7]T.C.A. § 10-7-414.

Miscellaneous Authority

Reference Number: CTAS-175

Promulgating Rules and Regulations

In conjunction with its general oversight authority the county public records commission is authorized to promulgate rules and regulations over certain matters under its jurisdiction. Pursuant to state law, the records commission has the authority to establish rules and regulations regarding the making, filing, storage, exhibiting, and copying of reproductions of records.^[1] Such rules and regulations must be approved by the majority of the voting members of the records commission and must be signed by the chair of the commission.^[2] The rules and regulations should include, but need not be limited to, the following:

1. Standards and procedures for the reproduction of records for security or for disposal of original records in all county offices;
2. Procedures for compiling and submitting to all county offices lists, schedules, or time tables for disposition of particular records within the county; and
3. Procedures for the physical destruction or other disposition of public records.

Lamination

The law also expressly authorizes the records commission to provide for the lamination of permanent records.^[3] This, however, is one of those cases where the law was too quick to embrace a technology. Instead of protecting documents, the lamination process too often destroys the very documents it is intended to preserve. For this reason, **the Tennessee State Library and Archives strongly recommends that permanent records not be laminated** but rather encapsulated in mylar sleeves.^[4]

Establishing Copying Charges

The records commission has the power to establish charges and to collect such charges for making and furnishing or enlarging copies of records.^[5] (This authority applies usually to records in county archives. Often, office specific statutes govern the fees charged for copies of records in particular offices such as the register of deeds or court clerk.) While it will be up to the county legislative body to determine how to allocate these revenues, counties may want to consider "re-investing" them in equipment, supplies, or personnel expenses related to records management and records preservation.

^[1]T.C.A. § 10-7-411.

^[2] T.C.A. § 10-7-411(c).

^[3]T.C.A. § 10-7-413(b).

^[4] See Tennessee Archives Management Advisory 99-009.

^[5]T.C.A. § 10-7-409.

Funding

Reference Number: CTAS-1149

The county legislative body may appropriate such funds as may be required for carrying out the purposes of the County Public Records Commission. This includes, but is not limited to, funding for purchasing or leasing equipment, the equipping of an office and related expenses, hiring administrative assistants, and the employment of expert advice and assistance.^[1]

^[1]T.C.A. § 10-7-408.

Establishing a Public Records Commission

Reference Number: CTAS-1150

The Tennessee State Library and Archives (TSLA) has been extremely helpful in the development of the following guidelines and the retention schedules. It has employees on its staff who have the task of working with local officials and records commissions to ensure good county records management and the preservation of important historical documents from Tennessee's history (those from days gone by as well as those we are creating each day). TSLA offers the following list of basic minimum actions that county public records commissions should be taking in order to fulfill their function of basic records management and oversight. For those records commissions that desire and have the resources to be more progressive,

there are further recommended courses of action that follow.

Minimums

- Meet at least twice a year. (This is the statutory minimum.)
- Set a schedule for regular meetings so that county officials can plan ahead for their interactions with the records commission.
- Elect officers (at least a chairman and a secretary).
- Keep minutes and records of decisions and transactions.
- Oversee the preservation and authorize the destruction of any and all public records as defined by the law.
 - Request offices to conduct an inventory of their records and submit that inventory to the PRC.
 - Use records inventories to gauge need for the destruction of temporary records and the sufficiency of storage space for permanent records.
 - Encourage records-keeping officers and PRC members to familiarize themselves with the records retention schedules.
 - Require county offices to begin using a standard Records Disposition Authorization form to document requests for records destruction.
 - Review the request, then authorize or disapprove requests from county offices to destroy original records, using the retention schedules for guidance.
 - Assure that authorizations for destruction of public records are forwarded to TSLA for review within 90 days of the PRC authorization.
 - Follow-up on requests sent to TSLA before destroying any records to make sure that approval of the destruction has been given.
- Establish rules and regulations regarding the making, filing, storage, exhibiting, and copying of reproductions of records.
- Establish procedures for compiling and submitting to all county offices lists, schedules, or time tables for disposition of particular records within the county.
- Establish procedures for the physical destruction or other disposition of public records.

Progressive Steps

TSLA suggests the following further measures that a PRC can take to strengthen its records management function.

- Hold meetings more than twice a year. (If your county is just beginning an effort to get records management going, meeting more often will be necessary. Also, if all the offices of a county begin actively participating in records management, two meetings will probably not be sufficient to thoroughly review all requests.)
- Report at least once a year to the county mayor and legislative body on commission activities and the state of records and archives management in the county.
- Review records keeping practices in county offices and recommend to the offices and to the county mayor and legislative body remedies to correct faults and improvements to deal with emerging information and records needs.
- Work with county offices, CTAS, TSLA, and the Records Management Division of the state Department of General Services to draft, review, revise, and issue realistic records management schedules for local government records.
- Encourage the development of disaster recovery and vital records protection plans for all county offices.
- Review and approve all plans by county offices for electronic imaging or data processing systems to assure that
 - (a) the system employed will protect and preserve records designated as permanent by CTAS retention schedules, and
 - (b) a permanent, archival-standard microfilm of permanent records is produced.
- Encourage a regular program of microfilming to protect and preserve permanent records of the county. Send a copy of any microfilm produced to TSLA for quality control testing and storage in the vault.

- Become more familiar with any records you intend to destroy so that you can recognize any that may have historical value or are good candidates for transfer to a county archives or outside Institute that can preserve the record for historical purposes.
- Propose to the county cooperative arrangements with other counties or cultural institutions such as libraries and universities for keeping, managing, and allowing for the public inspection of historically valuable records, including permanent public records of the county.
- Advise and propose to the county mayor and the legislative body the planning, development, site selection, establishment, funding, budget, regulation, and operation of a local archives and records office.
- Advise and recommend to the county mayor and legislative body the appointment and removal of personnel, including an archivist as director, for the central records office and archives.
- Review operations of any existing county records offices and archives to assure the county legislative body that they meet records management and archives management standards and satisfy the needs of the county and its citizens.

See Basic Records Management for additional information.

The Advantages of a Public Records Commission

Reference Number: CTAS-1151

Although the law requires that every county create a public records commission, there are more advantages to creating the commission than simply fulfilling the legal requirement. An active records commission helps to manage the records that your county generates efficiently and legally. Destroying out of date, temporary records alleviates records storage problems and frees up space in offices, possibly postponing the need for renovation or expansion of offices. If the records commission takes the additional measures suggested and works with the county to create an archives, the county has ensured that it has fulfilled its duty to provide long term access to public records as mandated by the Tennessee Code. Additionally, having an active PRC also demonstrates to the citizens of your county that its government is meeting its legal and custodial responsibilities of caring for public records.

For more information on how to get your PRC up and running, contact the Archives Development Program at the Tennessee State Library and Archives.

Public Access to Records

Reference Number: CTAS-210

Modern laws requiring public access to government records began to surface in the United States in the 1950s. But the concept of openness in government goes back to the start of our nation. Certain of the founding fathers placed a great deal of importance on the need for citizens to be informed about the activities of their government. However, even the most visionary of the founding fathers probably did not anticipate the depth and breadth of information held by the government today. The struggle to balance the right of the public to access government records with the increasing desire to protect privacy and confidentiality gets more difficult each year. While new technologies have enhanced our ability to manage data and information, they have also created new fears about abuse of personal and confidential information. The sword of liability can cut both ways. There are potential liability concerns for refusing access to records that are public and for disclosing confidential information. For these reasons, it is important for the custodian of public records to have a good understanding of the public's right to access government records and the limitations on that right.

The Freedom of Information Act (FOIA)

Reference Number: CTAS-1152

During the "atomic age" following WWII, a strong movement began on the state and federal level to allow the public access to information about what the government was doing and to files that the government had collected about individual citizens. This push resulted in the passage of "open records" laws in many states during the 1950s and culminated in the passage of the Freedom of Information Act at the federal government level^[1]. Tennessee was among those states passing an open records law in the 1950s.^[2] The specifics of our state laws will be discussed shortly, but first it is useful to make a few brief points about the Freedom of Information Act. "The Freedom of Information Act (FOIA)^[3] was passed by Congress in 1966 and amended in 1974. Based on the premise argued by Madison and Hamilton that openness in

government will assist citizens in making the informed choices necessary to a democracy, FOIA creates procedures whereby any member of the public may obtain the records of the agencies of the federal government.”^[4]

The main thing county officials need to know about the FOIA is that it applies to *agencies of the federal government*.^[5] The Freedom of Information Act does NOT apply to county governments. As a county records custodian, you need to be aware of the FOIA because citizens may try to assert their rights to county government records under that act due to confusion as to which laws apply. Different policies and procedures apply to federal offices under the Freedom of Information Act that are not included in the Tennessee public records statutes that apply to your office. Under the FOIA, citizens may request a federal agency covered by the act to perform searches of its records to locate certain information and then disclose the information, providing copies to the person making the request (subject to certain fees). As will be seen, Tennessee statutes allow broad access to public records, but they do not generally require local officials to perform searches or create new reports or responses to requests if those reports are not already a part of the office records.

^[1] *Using the Freedom of Information Act, a Step-by-Step Guide*, an American Civil Liberties Union Publication.

^[2] T.C.A. § 10-7-503, which makes most state and local government records in Tennessee public, passed in 1957.

^[3] 5 U.S.C.A. § 552(a).

^[4] *Using the Freedom of Information Act, a Step-by-Step Guide*, an American Civil Liberties Union Publication.

^[5] 5 U.S.C.A. § 552(f).

Tennessee Public Records Statutes

Reference Number: CTAS-1153

The public records statutes that do apply to county offices are found in Title 10, Chapter 7, Part 5 of the *Tennessee Code Annotated*. The starting point for a discussion of the law in this area is the declaration found in T.C.A. § 10-7-503, that government records are open to public inspection. It reads as follows:

... [A]ll state, county and municipal records ... except any public documents authorized to be destroyed by the county public records commission in accordance with § 10-7-404, shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.^[1]

This statute has been construed broadly by both the state attorney general and the Tennessee judiciary.^[2] The legislature made it clear that its intent in passing this law was to “...give the fullest possible public access to public records” and it instructed the courts to exercise whatever remedies are necessary to ensure that purpose is fulfilled.^[3] The courts have ruled that a “presumption of openness” exists with government documents.^[4] That is not to say that public access is totally without limitation however.

^[1] T.C.A. § 10-7-503.

^[2] See generally, *Memphis Publishing Co. v. Holt*, 710 S.W.2d 513 (Tenn. 1986).

^[3] T.C.A. § 10-7-505(d).

^[4] *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991).

Who Has Access?

Reference Number: CTAS-1154

The statute states that records must be open for inspection by any “citizen” of Tennessee. In keeping with the legislative intent to provide for liberal public access to government records, the Tennessee Supreme Court has determined that the word “citizen” includes convicted felons incarcerated as inmates within the Tennessee prison system.^[1] Although certain rights are stripped from individuals when they are convicted

of a felony (i.e. voting, ability to hold public office), the court concluded that neither the Tennessee Public Records Act nor any other statute prevented a convicted felon from seeking access to public records. Neither should access be denied to anyone else who appears to be a citizen of this state.

The law is not as generous with non-residents. Since the statute states that it grants public access to "any citizen of Tennessee," the Tennessee attorney general has opined that public officials may deny requests for copies of public records based on the lack of state citizenship.^[2] Since there is no fundamental federal right to access of government records and since Tennessee's laws provide access only to state citizens, the attorney general reached the conclusion that it is not a violation of the privileges and immunities clause of the United States Constitution to deny access to persons making requests from other states for Tennessee records. Keep in mind that although the act does not affirmatively require disclosure of public records to non-citizens, neither does it prohibit the release of public records to non-citizens.^[3] It is within the discretion of the official who has custody of the records to determine whether or not access will be provided to non-citizens. It is the recommendation of CTAS that offices should develop a written policy in that regard and enforce it consistently.

^[1]*Robin M. Cole v. Donal Campbell*, 968 S.W.2d 274 (Tenn. 1998).

^[2]Op. Tenn. Att'y Gen. No. 99-067 (March 18, 1999) re-affirmed by Op. Tenn. Att'y Gen. No. 01-132 (August 22, 2001).

^[3]Op. Tenn. Att'y Gen. No. 99-067 (March 18, 1999).

How Should Access Be Provided?

Reference Number: CTAS-1155

The law states that records shall be open to inspection "during business hours." Every effort should be made to provide reasonable accommodation to parties requesting access to records; however, providing this service need not prevent the performance of other duties of the office. A request to see every record of an office and make a photocopy of each of them could obviously bring the entire operation of an office to a halt. For this reason, the official who has custody of the records is also authorized by law to adopt and enforce reasonable rules governing the making of extracts, copies, photographs or photostats of the records.^[1] These regulations should be reasonable and not interfere with the intent of the legislature to provide broad public access to records. The official with custody of the record should strive to balance the right to access records with his or her responsibility to preserve and protect the records. Regulations should be tailored to accommodate requests in a timely manner while allowing for the continued efficient functioning of the office and for the preservation and security of the records. Regulations that are intended to frustrate the ability of a citizen to access records will likely be found unreasonable and struck down by the courts. The county public records commission may serve as a valuable resource in developing and drafting these regulations.

Although there is little legal authority in this area, the following are some examples of regulations that would likely be found reasonable by a court:

- Establishing that copies of records would be provided within a reasonable time period (for example: the next business day for small requests and within five business days for larger requests);
- Prohibiting the inspection and copying of records by citizens without supervision of the official or an employee of the office; and
- Prohibiting the handling of older bound volumes or other fragile records by anyone other than an employee of the office so long as the information in the records is still provided in a usable format.

Another possible regulation could provide that requests for inspection of a large number of records would be accommodated only by appointment pursuant to a written request. In a 2001 opinion, the attorney general was asked to consider a very similar requirement. In opinion 01-021, the attorney general found that there was no clear answer to the question. While the public records laws are to be interpreted to allow the fullest possible access, this should not lead to absurd results. The attorney general opined that if a citizen challenged a requirement to set an appointment to view records, a court might not find this requirement to be tantamount to a denial of access if the agency could articulate a reasonable basis for requiring the appointment. Absent a legitimate reason, the court may conclude the requirement of an appointment was merely being used to delay access to the records.^[2] This opinion therefore appears to support the idea that local officials can implement reasonable regulations so long as there is a clear,

articulated reason for the regulation that relates to goals of records management. .

[1] T.C.A. § 10-7-506(a).

[2] See Op. Tenn. Att’y Gen. No. 01-021 (February 8, 2001).

Limiting Risks

Reference Number: CTAS-1156

Be aware that there is a danger of theft, vandalism, or damage by negligence inherent in allowing a member of the public access to government records. There is a profitable market out there for certain historical manuscripts. Across the country, government records are disappearing from government offices and reappearing for sale in antique stores, flea markets, speciality shops, or Internet auction sites. To prevent theft or vandalism, someone from your office should supervise the person accessing the records or, at a minimum, the person accessing the records should be required to examine them in an open area where abuse of the records or attempted thefts will be noticed. If county records have been lost in the past and are discovered in someone’s possession, the Tennessee Code, in Section 39-16-504, grants statutory authority to counties to initiate judicial proceedings to reclaim lost, stolen, or otherwise misappropriated records.

Providing Copies of Public Records

Reference Number: CTAS-1157

In all cases in which a person has the right to inspect public records, he or she also has the right to take extracts or make copies of the record, or to make photographs or photostats of the record while it remains in the possession, custody, and control of the official who has lawful custody of the record.^[1] In 1999, the attorney general interpreted this to mean that the Tennessee Public Records Act does not require a public official to make copies and send them to anyone regardless of whether or not they are a citizen of Tennessee.^[2] However, this opinion is limited by a subsequent court decision. In the case of *Waller v. Bryan*,^[3] the Tennessee Court of Appeals required public officials to make public records available to members of the public who could not visit the official’s office under certain circumstances. In that case, an inmate appealed the ruling of a chancellor that he was not entitled to requested records which were in the possession of a police department. The local government refused to make copies of the requested records and mail them to the inmate. Obviously, his circumstances did not allow him to appear in person to inspect the records and make a copy. The Court of Appeals held that as long as a citizen can sufficiently identify the requested records so that the government office knows which records to copy, the official should comply with the records request. To refuse to do so merely because the citizen could not appear in person would, in the words of the court, “place form over substance and not be consistent with the clear intent of the Legislature.”^[4] The court observed that a requirement to appear in person would not only limit access to records by inmates, but also all those Tennessee citizens who were prevented by health problems or other physical limitations from appearing at the government office.

[1] T.C.A. § 10-7-506(a).

[2] Op. Tenn. Att’y Gen. No. 99-067 (March 18, 1999).

[3] *Waller v. Bryan*, 16 S.W.3d 770, (Tenn. App. 1999).

[4] *Waller*, at 773.

Charging for Copies

Reference Number: CTAS-1158

The Office of Open Records Counsel, created in 2008, was charged with developing a schedule of reasonable charges which may be used as a guideline in establishing charges or fees, if any, to charge a citizen requesting copies of public records. On October 1, 2008, the Office of Open Records Counsel issued its Schedule of Reasonable Charges for Copies of Public Records. Records custodians are authorized by T.C.A. § 10-7-503(a)(7)(C)(i) to charge reasonable costs consistent with the schedule. The schedule, together with instructions for records custodians, can be found on the website of the Office of Open Records Counsel. Charges established under separate legal authority are not governed by the schedule, and are not to be added to or combined with charges authorized under the schedule. Questions

regarding the schedule should be directed to the Office of Open Records Counsel.

Records with Commercial Value

Reference Number: CTAS-1159

The legislature has recognized that in certain circumstances, a governmental agency may expend a great deal of money developing a record with great commercial value. That record in turn may then be requested by a company who only has to pay a small fee for a reproduction of the information which may be used to generate significant amounts of revenue. Therefore, the legislature in 2000 amended T.C.A. § 10-7-506 to add provisions that protect the investment of government resources specifically in computer generated maps or geographic information systems. These systems are expensive to develop and have numerous profitable commercial applications once the data is developed. Private entities could acquire a copy of the data and regular updates for practically no cost then profit greatly by selling subscriptions to the data. For this reason, the legislature allowed governments to also recover a portion of the actual development and maintenance costs when providing copies of computerized mapping systems or data to persons other than the news media or individuals for non-business use. While this general statute is limited to electronic geographic records, an additional statute applicable only to court clerks offices in Knox and Shelby counties allows those officials to charge a fee not to exceed \$5 for computer searches for any public record having a commercial value.^[1]

^[1] T.C.A. § 8-21-408.

Special Issues in Providing Access to Court Records

Reference Number: CTAS-1160

Court records can be a little different from most of the records in other county offices in that they are created by parties of the case who need access to the records on an on-going basis during litigation. The evidence and discovery materials in the cases are not created by the clerk, but merely held for use by the parties. For this reason, though case files are technically public records, special provisions may apply. The United States Supreme Court has stated that "every court has supervisory power over its own records and files."^[1] In Tennessee, the Court of Criminal Appeals has similarly ruled that "a trial court has the inherent authority to determine the custody and control of evidence held in the clerk's office."^[2] These case files, while in the court clerk's office, will usually be open to the public.^[3] This public right of access is rooted in the First Amendment and in the common law, but is a qualified right.^[4] Since this right is qualified and not absolute, it is subject to the court's discretion on a particular matter.^[5] Therefore, unless there is a statute making a record confidential or a clear court directive sealing records or prohibiting public access to the records, the public may access case files. If the court seals a record, it becomes confidential and free from public scrutiny.^[6] This power is not unlimited. The records may only be sealed when "interests of privacy outweigh the public's right to know."^[7] If parties to litigation approach a clerk with concerns about public access to materials included in case files, the clerk should direct the parties to petition the judge to order such records sealed from public access. Additionally, as parties to litigation may need extended access to and use of case records, courts may also adopt rules to authorize that pleadings and exhibits may be withdrawn by parties to the case or their legal representatives.^[8]

^[1] *Nixon v. Warner Communications*, 435 U.S. 589, 98 S.Ct. 1306 (1978).

^[2] *Ray v. State*, 984 S.W.2d 236, 238 (Tenn. Crim. App. 1997).

^[3] *Smith v. Securities and Exchange Commission*, 129 F.3d 356, 359 (6th Cir. 1997). See also Op. Tenn. Att'y Gen. No. 02-075 (June 12, 2002).

^[4] *Ballard v. Herzke*, 924 S.W.2d 652, 661-662 (Tenn. 1996).

^[5] *Ray v. State*, at 238.

^[6] *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 (Tenn. Crim. App. 1998)

^[7] *In re Knoxville News-Sentinel*, 723 F.2d 470, at 474 (6th Cir. 1983).

^[8] Op. Tenn. Att'y Gen. No. 02-075 (June 12, 2002).

Expunging Court Records

Reference Number: CTAS-1161

Several statutes in Tennessee law provide for parties to have records of judicial proceedings involving them expunged from the records of the court and certain other offices.

The basic statute for expunction of criminal offense records is found in T.C.A. § 40-32-101. This statute allows individuals to have their records expunged if they are not convicted of any crime. The statute also allows for expungements of charged offenses if the individual was not convicted of the charged offense, even if they are convicted of another offense, so long as the only offense the individual was convicted of was a traffic offense. Additionally, subsection (j) allows an individual to apply for expungement of records from electronic databases relating to the person's arrest, indictment, charging instrument, or disposition for any charges other than the offense for which the person was convicted. Finally, subsection (g) allows for the expungement of certain less serious convictions under certain circumstances if the individual pays the required statutory fees.

The law provides that the record to be expunged "does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys general that are maintained as confidential records for law enforcement purposes and are not open for inspection by members of the public and shall also not include records of the department of children's services or department of human services that are confidential under state or federal law and that are required to be maintained by state or federal law for audit or other purposes." Court cases have also determined that physical evidence is not addressed by the expungement statutes; and therefore, cannot be expunged. *State v. Powell*, 1999 WL 512072 (Tenn. Ct. App. July 21, 1999, permission to appeal denied January 24, 2000).

In cases of judicial diversion, there is separate statutory authority for expunging records. T.C.A. § 40-35-313. In those circumstances, a person who had charges dismissed through judicial diversion may apply to the court to expunge all official records other than certain non-public records that are kept solely to determine whether the person is eligible for diversion in the future. The application for expungement shall contain a notation by the clerk evidencing that all court costs are paid in full, prior to the entry of an order of expungement. If the court determines, after hearing, that the charges against such person were dismissed and the proceedings discharged, it shall enter such order. The effect of such order is to restore the person, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

Other statutes authorize expunction in cases that were dismissed through pre-trial diversion under a memoranda of understanding, T.C.A. § 40-15-105, or in cases where the governor declares the defendant exonerated. T.C.A. § 40-27-109.

In cases where the criminal record is expunged, certain information must be reported to the Tennessee Bureau of Investigation (TBI) to be maintained in its expunged criminal offender and pretrial diversion database. T.C.A. § 38-6-118.

In addition to courts with criminal jurisdiction, the primary statute on expunging criminal offenses explicitly states that it applies to juvenile courts. T.C.A. § 40-32-101(a)(4). Additionally, juveniles who have their driving record suspended can apply to have that record expunged once they reach 18 years of age and have their license reinstated. T.C.A. § 55-10-711.

Outside of the criminal setting, parties to any divorce proceeding, who have reconciled and dismissed their cause of action, may file an agreed sworn petition signed by both parties and notarized, requesting expungement of their divorce records. T.C.A. § 36-4-127. Upon the filing of such petition, the judge shall issue an order directing the clerk to expunge all records pertaining to such divorce proceedings, once all court costs have been paid. The clerk shall receive a fee of \$50 for performing such clerk's duties under this section.

Other less commonly used statutory provisions allow for the expunction of affidavits of heirship from the register of deeds office, T.C.A. § 30-2-712, and records of proceedings related to the appointment of a fiduciary where none was appointed. T.C.A. § 34-1-124. Also, records of military discharge may be expunged by registers of deeds from their records upon application by proper parties T.C.A. § 10-7-513.

Providing Access to Records in Non-Paper Formats

Reference Number: CTAS-1162

The records of governmental offices are no longer only paper documents or bound books. Records may now be found in a diverse mixture of media. If your office stores records in various formats, such as

audiotape or videotape, you may need to make sure some means of accessing the record is readily available to the public. Since the definition of a public record includes records of many formats (including various audio and video records and electronic files), the attorney general has opined that it may violate the Public Records Act if the custodian of the records stored in these other formats could not provide a means for the public to inspect these records.^[1] This may require you to have a VCR and television or tape player available for use in your office or somewhere in the courthouse. Separate statutes specifically related to electronic records and microfilm records also require that equipment be available to allow viewing of records stored in these other media.^[2] These mandates may be of particular concern to an archives facility which may store records of many different formats in one location. Allowing continued access to these records may prove difficult for both the office that created the records and the archives. For additional information, see Electronic Records.

^[1] Op. Tenn. Att'y Gen. No. 01-021 (February 8, 2001).

^[2] T.C.A. §§ 10-7-121 and 10-7-406.

Providing Access to Electronic or Computerized Records

Reference Number: CTAS-1163

The advent of computers in government record keeping has created legal issues regarding not only the question of "what is a public record?" but also "what is the record itself." If the assessment rolls in the assessor of property's office are stored in computers, is the record only a standard report of that information or is it the raw data itself? If the public requests that the data be organized and produced in a format other than standard reports generated routinely by the office, is it entitled to that information in a format of its own choosing?

This is an area of the law that is developing along with the technology that clouds the issue. While the law was amended in 2017 to mandate acceptance of records request by electronic means under certain circumstances the law is less developed relative to methods of delivering requested records and what electronic data must be provided.

Relative to delivery, the Office of Open Records Counsel (OORC) has stated that when records are maintained electronically, records custodians should produce requested records electronically. The OORC has also stated that records should be produced electronically, when feasible, as a means of utilizing the most economical and efficient method of producing records.

Relative to what electronic data must be provided, under T.C.A. § 10-7-503 a county is not required "to sort through files to compile information or to create or recreate a record that does not exist" and "request for inspection or copying of a public record shall be sufficiently detailed to enable the governmental entity to identify the specific records for inspection and copying." However, the line between simply providing recorded data stored electronically and creating a new record or compiling information can often become blurry based on the request and the county's existing technology resources.

This is an area of the law that will undoubtedly evolve in the coming years as counties and citizens both become increasingly intertwined with technology.

Remote Access to Computerized Records

Reference Number: CTAS-1164

Another development that has arisen with the advent of electronic records and the development of the Internet is the ability of citizens to access information remotely. County offices are authorized under Tennessee law to provide computer access and remote electronic access (for inquiry only) to information contained in the records of the office which are stored on computer.^[1] Access may be provided both during and after regular business hours. The official who has custody of the records may charge persons using remote electronic access a reasonable amount to recover the costs of providing such services and no other services. The fee must be uniformly applied and must be limited to the actual costs of providing access. It can not include the cost of storage and maintenance of the records or the costs of the electronic record storage system.^[2] Any officials providing remote access to their computer records must implement procedures and utilize a system that does not allow records of the office to be altered, deleted or impaired in any manner. Any official choosing to provide this service must file a statement with the office of the Comptroller of the Treasury at least 30 days prior to implementing the system. The statement must describe the computer equipment, software and procedures that are used to provide access and to maintain security and preservation of the computer records. The state of Tennessee will not bear any of

the costs of providing access.^[3] Once a system for providing access is in place, any member of the public willing to pay the fees must be allowed to have access to the records, including anyone desiring to use the information for proprietary purposes.^[4] Similar provisions specific to electronic files of voter registration systems can be found elsewhere in the code.^[5]

An attorney general's opinion examined the question of whether a county official could provide remote access to public records through a private vendor.^[6] In the circumstances described in the opinion, a vendor was allowed to upload a copy of the data stored on the computers in the office of the register of deeds in exchange for certain services provided by the vendor. The vendor then had the right to provide public access to the data via a subscription service. The attorney general opined that this agreement violated T.C.A. § 10-7-123. Specifically, subsection (a)(4) of that statute provides that once a remote access system is in place, access must be given uniformly to all members of the public who desire access so long as they pay the reasonable fees to the county official to cover the cost of actually providing the service. In this case, remote access was being provided by the county official only to one entity, the vendor, and denied to the rest of the public. The law does not prohibit a private vendor from selling subscriptions to the information which has been acquired from county offices.^[7] But it does require the county official to provide equal access to the data to anyone willing to pay the access fee.

The attorney general has also been asked whether there was a problem with the criminal court clerk's office making records, including information about arrests, charges and disposition of cases, available on the Internet. The attorney general opined that the clerk could make such records available in that fashion, so long as the clerk still complied with orders to expunge records and insured they were removed from the Internet as well as the files of the clerk's office once an order compelling expungement was issued by the judge.^[8] This standard applied whether a case led to a conviction or was disposed of through judicial diversion.^[9]

[1] T.C.A. § 10-7-123.

[2] T.C.A. § 10-7-123.

[3] T.C.A. § 10-7-123(a)(1).

[4] T.C.A. § 10-7-123(a)(4).

[5] T.C.A. § 2-2-138.

[6] Op. Tenn. Att'y Gen. No. 04-114 (July 19, 2004).

[7] Op. Tenn. Att'y Gen. No. 04-114.

[8] Op. Tenn. Att'y Gen. No. 00-058 (March 31, 2000).

[9] Op. Tenn. Att'y Gen. No. 00-014 (January 26, 2000).

Denial of Access to Public Records—Liability

Reference Number: CTAS-1165

Any citizen of Tennessee who is denied the right to personal inspection of a public record in whole, or in part, is entitled to petition the court to review the actions that were taken to deny access and to grant access to the record.^[1] Petitions may be filed in the chancery court for the county where the records are located or in any other court exercising equity jurisdiction in the county.^[2] Upon the filing of the petition, the court shall, at the request of the petitioning party, issue an order requiring the defendant to appear and show cause why the petitioner should not be granted access to the record. No formal written response to the petition is required. The burden of proof rests on the person having custody of the records to show why public access should not be allowed.^[3] If the court determines that the petitioner has a right to inspect the records, they shall be made available unless the defendant timely files for appeal or the court certifies a question with respect to disclosure of the records to an appellate court.^[4] If a public official is required to disclose records pursuant to these procedures, he or she can not be held civilly or criminally liable for any damages caused by the release of the information.^[5] If, however, the court determines that the government entity knowingly and willfully refused to disclose a public record, it may, in the discretion of the judge, assess all reasonable costs involved in obtaining the record, including attorney's fees, against the governmental entity.^[6]

- [1] T.C.A. § 10-7-505(a).
- [2] T.C.A. § 10-7-505(b).
- [3] T.C.A. § 10-7-505(c).
- [4] T.C.A. § 10-7-505(e).
- [5] T.C.A. § 10-7-505(f).
- [6] T.C.A. § 10-7-505(g).

To What Records Is the Public Entitled Access?

Reference Number: CTAS-1166

It has already been noted that the legislature intended the fullest possible public access to public records. But what are public records? Generally speaking, the courts have ruled that "[i]n those instances where documents have been made or received in connection with the transaction of official business by any governmental agency, then a presumption of openness exists, and the documents are public records within the meaning of T.C.A. § 10-7-503."^[1] Access is not limited by the format in which the record or information is kept. However, the presumption of openness is overcome whenever state law provides that a record shall be kept confidential.

^[1] *Griffin v. City of Knoxville*, 821 S.W.2d 921, 924 (Tenn. 1991) as quoted in Op. Tenn. Att'y Gen. No. 99-011 (January 25, 1999).

Confidential Records

Reference Number: CTAS-1167

A lengthy statute in the Tennessee Public Records Act provides a laundry list of government records that must be kept confidential.^[1] This statute is amended and added to on a regular basis by the General Assembly. The following list highlights a few of the many records designated as confidential by T.C.A. § 10-7-504 (see statute for complete list):

- Medical records of patients in state, county, and municipal hospitals and medical facilities;
- Any records concerning the source of body parts for transplantation or any information concerning persons donating body parts;
- All investigative records of the TBI, the office of the TennCare Inspector general, all criminal investigative files of the motor vehicle enforcement division of the department of safety relating to stolen vehicles or parts, all files of the drivers' license issuance division and the handgun carry permit division of the department of safety relating to bogus drivers' licenses and handgun carry permits issued to undercover law enforcement agents;
- Records of students in public educational institutions (for more discussion of these records, see Student Records);
- Certain books, records, and other materials in the possession of the office of the attorney general relating to any pending or contemplated legal or administrative proceeding;
- State agency records containing opinions of value or real and personal property intended to be acquired for a public purpose;
- Certain personal information of law enforcement officers^[2];
- Investigative records and reports of the internal affairs division of the department of correction or the department of children's services;
- Official health certificates, collected and maintained by the state veterinarian;
- The capital plans, marketing information, proprietary information, and trade secrets submitted to the Tennessee venture capital network;
- Records of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the board of regents or the University of Tennessee, when the owner or donor wishes to require that the records are kept confidential;
- Personal information contained in motor vehicle records;
- All memoranda, work notes or products, case files, and communications related to mental health intervention techniques conducted by professionals in a group setting to provide job-related critical

- Incident counseling and therapy to law enforcement officers, EMTs, paramedics, and firefighters;
- All riot, escape, and emergency transport plans incorporated in a policy and procedures manual of county jails and workhouses or prisons operated by the department of correction or under private contract;
- In order of protection cases, any documents required for filing other than certain forms promulgated by the Tennessee Supreme Court;
- Computer software and manuals sold to state agencies or counties;
- Credit card numbers and related identification numbers or authorization codes;
- Credit card numbers, social security numbers, tax ID numbers, financial institution account numbers, burglar alarm codes, security codes, and access codes of any utility;
- Records that would allow a person to identify areas of structural or operational vulnerability of a utility service provider or that would permit disruption or interference with service;
- Contingency plans of governmental entities for response to violent incidents, bomb threats, ongoing acts of violence, threats related to weapons of mass destruction, or terrorist incidents;
- Records of any employee's identity, diagnosis, treatment, or referral for treatment by a state or local government employee assistance program;
- Unpublished telephone numbers in the possession of emergency communications districts;
- Personally identifying information ((i) Social security numbers; (ii) Official state or government issued driver licenses or identification numbers; (iii) Alien registration numbers or passport numbers; (iv) Employer or taxpayer identification numbers; (v) Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; or (vi) Unique electronic identification numbers, addresses, routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data;
- Records identifying a person as being directly involved in the process of executing a sentence of death; and
- Information that would allow a person to obtain unauthorized access to confidential information or to government property. ^[3]

For county governments, one important class of confidential records involves personal information of state, county, municipal, and other public employees. An employee's home telephone and personal cell phone numbers, bank account information, health savings account information, retirement account information, pension account information, Social Security number, residential address, driver's license information (except where driving is a part of the employee's job), emergency contact information, and personal, non-government issued, email address are confidential. Additionally, applicants for county employment and former employees are also protected by these confidentiality provisions (as are immediate family members, whether or not the immediate family member resides with the employee, or household members of the employee). Where this confidential information is part of a file or document that would otherwise be public information, such information shall be redacted if possible so that the public may still have access to the nonconfidential portion of the file or document. T.C.A. § 10-7-504(f).

Proposals and statements of qualifications received by a local government entity in response to a personal service, professional service, or consultant service request for proposals or request for qualifications solicitation, and related records, including, but not limited to, evaluations, names of evaluation committee members, and all related memoranda or notes, are declared to be confidential, but only until the intent to award the contract to a particular respondent is announced. T.C.A. § 10-7-504(a).

This list of confidential records found in T.C.A. § 10-7-504 is not exclusive, however, and other statutes, rules, and the common law dealing with a subject matter can also make a specific record confidential.^[4] While the following list is not exhaustive, these statutes are other legal sources that designate certain records that may be in the possession of a county office as confidential:

- All memoranda, work products or notes and case files of victim-offender mediation centers (T.C.A. § 16-20-103);
- Adoption records and related records (T.C.A. §§ 36-1-102 and following);
- Many records regarding juveniles (see T.C.A. §§ 37-1-153, 37-1-154, 37-1-155, 37-1-409, 37-1-612, 37-1-615 and 37-2-408);
- Certain records regarding the granting of consent to abortion for a minor and other records regarding abortion (T.C.A. §§ 37-10-304, 39-15-201);

- Pursuant to T.C.A. § 38-7-110, all or a portion of a county medical examiner's report, toxicological report or autopsy may be declared confidential upon petition by the district attorney on the grounds that release of such record could impair the investigation of a homicide or felony. Additionally, 2005 Public Chapter 216 made it a criminal offense for certain audio and video materials related to an autopsy to be released to an unauthorized person.
- Certain student information;
- Whistleblowing reports of violations of the Education Trust in Reporting Act (T.C.A. §§ 49-50-1408);
- Certain records of an employer's drug testing program (T.C.A. § 50-9-109);
- Accident reports (T.C.A. § 55-10-114 (along with 10-7-504));
- Tax returns and tax information (T.C.A. § 67-1-1702);
- Business tax statements, reports, and returns as well as some information on business license applications^[5] (T.C.A. § 67-4-722);
- Information or records held by a local health department regarding sexually transmitted diseases (T.C.A. § 68-10-113);
- Patient medical records of hospitals and local or regional health departments (T.C.A. § 68-11-305); and
- Nursing home patient records (T.C.A. § 68-11-804).

Please note that this list only highlights some of the other provisions of the Tennessee Code that make records confidential. Additionally, the Tennessee Supreme Court has ruled that sources of legal authority other than statutes may make a record confidential. For example, the Tennessee Supreme Court has ruled that the Tennessee Rules of Criminal Procedure and Civil Procedure may also designate certain records as confidential.^[6] Other records may be sealed by a court order or made confidential by a federal statute or regulation. If you have a question regarding the confidentiality of a specific record not listed above, contact your county attorney or CTAS county government consultant for assistance.

[1] T.C.A. § 10-7-504.

[2] T.C.A. § 10-7-503(c) also addresses the subject.

[3] T.C.A. § 10-7-504.

[4] Op. Tenn. Att'y Gen. No. 99-022 (February 9, 1999).

[5] See Op. Tenn. Att'y Gen. No. 01-165 (September 15, 2001) for a discussion of the confidentiality of phone numbers and other identifying numbers used in the enforcement of the business tax.

[6] See *Appman v. Worthington*, 746 S.W.2d 165, 166 (Tenn. 1987) and *Ballard v. Herzke*, 924 S.W.2d 652, 662 (Tenn. 1996).

Maintenance of Confidentiality

Reference Number: CTAS-1168

Any record that is designated as confidential must be treated as confidential by the agency with custody of the record throughout the maintenance, storage, and disposition of the record. This includes destroying the record (if it is eligible for destruction) in such a manner that the record cannot be read, interpreted, or reconstructed^[1]. However, once a confidential record has been in existence more than 70 years, it shall be open for public inspection by any person unless disclosure of the record is specifically prohibited or restricted by federal law or unless the record is a record of services for mental illness or retardation.^[2] This "70-year rule" also does not apply to adoption records, records maintained by the office of vital records, and records of the TBI that are confidential.^[3]

[1] T.C.A. § 10-7-504(b). See also Op. Tenn. Att'y Gen. 01-040 (March 19, 2001).

[2] T.C.A. § 10-7-504(c).

[3] T.C.A. § 10-7-504(c).

Special Considerations and Specific Types of Confidential Records

Reference Number: CTAS-1169

Personally Identifying Information

Reference Number: CTAS-1170

In 2016 the General Assembly amended T.C.A. § 10-7-504 to provide that no governmental entity shall publicly disclose *personally identifying information* of any citizen of the state unless: (i) Permission is given by the citizen; (ii) Distribution is authorized under state or federal law; or (iii) Distribution is made: (a) To a consumer reporting agency as defined by the federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 et seq.); (b) To a financial institution subject to the privacy provisions of the federal Gramm Leach Bliley Act (15 U.S.C. § 6802); or (c) To a financial institution subject to the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 (31 U.S.C. §§ 5311 et seq.).

The law defines "personally identifying information" to include: (i) Social security numbers; (ii) Official state or government issued driver licenses or identification numbers; (iii) Alien registration numbers or passport numbers; (iv) Employer or taxpayer identification numbers; (v) Unique biometric data, such as fingerprints, voice prints, retina or iris images, or other unique physical representations; or (vi) Unique electronic identification numbers, routing codes or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data.

The law provides that it does not prohibit the use of personally identifying information by a governmental entity in the performance of its functions or the disclosure of personally identifying information to another governmental entity, or an agency of the federal government, or a private person or entity that has been authorized to perform certain duties as a contractor of the governmental entity.

The name, mailing address, physical address, phone number, email address, social security number, or any other personally identifying information provided by an individual, whether or not the individual is a citizen of this state, as part of the individual's use of, or participation in, a government-sponsored or -supported property alert service or program, is not a public record and is not open for public inspection. "Property alert service or program" refers to an online service that electronically alerts participants when a document is filed and indexed in the register of deed's office that references the participant's name or address.

Motor Vehicle Registration Records

Reference Number: CTAS-1171

Access to motor vehicle registration records held by the Department of Safety, the Department of Revenue, or in the office of the county clerk when acting as an agent of those departments is restricted by both state and federal law. The federal Drivers Privacy Protection Act places restrictions on access to these records.^[1] In addition, in 1996, our state legislature adopted the Uniform Motor Vehicle Records

Disclosure Act that closely parallels the language of the federal act.^[2] Under the provisions of these laws, personal information obtained by those government offices in connection with a motor vehicle record can not be disclosed except for specific purposes to certain authorized individuals or with the consent of the driver.^[3]

Personal information is defined to include information that identifies a person, including an individual's photograph, computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information.^[4] Use of the information is generally

allowed for governmental agencies in carrying out their functions.^[5] Additionally, the statutes include about a dozen other authorized uses whereby certain private parties have rights to access the records for those specified purposes.^[6]

If a county clerk is presented with a request for personal information from motor vehicle records from a private citizen or a company, he or she should compare the request to the restrictions and authorizations found in T.C.A. §§ 55-25-103 through 55-25-112 and 18 U.S.C. § 2721 through 18 U.S.C. § 2725 to determine whether the release of such information is lawful. The Tennessee Department of Safety, Division of Title and Registration may be able to provide county clerks with further guidance regarding these records if necessary.

Disposal of Records

Reference Number: CTAS-206

Even the best planned and operated records program will fail miserably if it never gets rid of records. Simply keeping and storing away every record in short, the "out of sight, out of mind" version of records management is not a viable or responsible option. In order to find what you need and preserve what you need to keep, you have to eliminate records that no longer have any value. That is where disposal comes in.

Checks and Balances—Disposing of the records of a county office is not as simple as hauling them out to the trash when you get tired of them. Because these records can be of great importance to so many people, there are a number of procedural checks and balances to go through in order to lawfully dispose of records, whether the disposition is by destruction or transfer of the records to another institution. For many records, the official who has custody of the record, the county public records commission, the Tennessee State Library and Archives, and, for court records, a judge, all need to be involved in determining the final disposition of the record.

What Kind of Record Is It?—When trying to decide what to do with records, the first step is to identify them and classify them. The retention schedules will tell you how long a record needs to be kept. Find the description in the schedule that matches the record you are considering and see what the table indicates. For disposition purposes, records will fall into one of three classes: working papers, temporary records, and permanent records. The procedures for disposing of each of these classes are different.

Working Papers

Reference Number: CTAS-1190

Working papers are defined as "those records created to serve as input for final reporting documents, including electronic processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication."^[1] This class of records comprises all those little records that come and go in the course of a day that we usually do not even think about as records. Whether it's notes for a meeting or a rough draft of a report, if the record becomes obsolete after you use it, consider it a working paper. The good news about working papers is that they are easy to get rid of. Any public record defined as a working paper may be destroyed in accordance with the rules and regulations adopted by the public records commission without retaining the originals of such record and without further review by other agencies.^[2] Any rules and regulations of a public records commission regarding working papers should be liberal, allowing county officials to eliminate these records as easily as possible before they become burdensome. Many working papers generated by county offices are extremely informal types of records. Because of that officials may not find anything in the retention schedules that describes them. Consider whether the record matches the definition above when trying to determine if it is a working paper.

^[1] T.C.A. § 10-7-301.

^[2] T.C.A. §§ 10-7-406(b) and 10-7-413.

Temporary Records

Reference Number: CTAS-1191

If a record needs to be kept around for some reason after its initial use, then it is at least a temporary record. Temporary records are officially defined as "...material which can be disposed of in a short period of time as being without value in documenting the functions of an agency."^[1] Financial and payroll records are good examples. Payroll records have fulfilled their immediate purpose once your employees receive their checks. But those records also must be kept in order to comply with federal statutes and regulations and are important documents in the case of an audit. Most of these retention periods are fairly short (three to five years) and therefore it is simplest to keep most temporary records in their original paper format during this retention period. For a few classes of temporary records, the retention period is long enough or the class of records is so voluminous that it may be helpful and cost effective to transfer the record to a different format for storage during the retention period. Additionally, some temporary records may only exist in electronic format and will never be printed on paper. The law allows this practice as long as certain conditions are met. Regardless of what form the record is in (paper, computer disc, microfilm) the period of retention is determined by the *content* of the record and not its *format*. Although

they take up less space, electronic records also need to be managed and preserved or destroyed in accordance with retention schedules and RDAs.

Once a temporary record has been retained for the period described in the schedule, then, like a working paper, it may be destroyed in accordance with the rules and regulations of the county public records commission.^[2] The rules of the records commission should require the official wishing to destroy temporary records to notify the commission of the kind of record to be destroyed and cite an authority for its destruction. An easy way to do this is to use the five-digit code number that appears with each listing in the retention schedules as a reference for the authorization to destroy the record. Although your county public records commission may wish to individually review each request to destroy temporary records before approving destruction, it may also provide for a less cumbersome procedure.

Continuing Authorization for Destruction of Temporary Records

The Tennessee State Library and Archives has agreed that county public records commissions can provide "continuing authorization" to destroy records so long as the official is complying with the retention schedules. If your records commission adopts the retention schedules and adopts rules that allow for continuing authorization, it is recommended that all officials request continuing authorization from the commission. Once granted, they would only need to notify the commission when records are being destroyed in compliance with the schedule, identifying the type, age, and quantity of the records, and would not have to wait for further authorization or approval to proceed.

For example, many payroll-related records need to be kept for three years. The retention schedule for *Employment Records* describes those records and cites the federal regulations that establishes that retention period. To use continuing authorization to dispose of these records, use the following steps:

1. The public records commission should adopt the retention schedules.
2. The official who has custody of the records should develop an RDA that describes the records he or she believes fall into these records classes.
3. The public records commission should review the RDA to make sure it describes records which appropriately fall under the chosen retention period and then approve the RDA.
4. Once the RDA is approved, the official can begin destroying all records that are covered by the RDA which have been kept for the length of time designated in the retention schedule. As time passes and more records pass the threshold for destruction (in this case three years), the official can automatically destroy the records and send a brief notice to the records commission informing it of this action.

This process can continue indefinitely, without the need to make formal requests or wait on approvals, until such time as the official or the records commission determines that the RDA needs to be revised or reconsidered.

^[1] T.C.A. § 10-7-301.

^[2] T.C.A. §§ 10-7-406(b) and 10-7-413.

Permanent Records

Reference Number: CTAS-1192

Permanent records are records of such value that they must always be retained in some kind of permanent format. Examples of permanent records are the deeds filed in a registers office, the minutes of the county commission, and the original process in a civil or criminal proceeding. Some records, like deeds, are kept permanently because the record continues to have legal significance in perpetuity. Other records are permanent because they preserve certain information about the way we live and conduct government and are therefore valuable historically. Still others are useful for statistical or planning purposes. Then there are those that are permanent simply because there are laws that have declared them to be so. All of these need to be kept in such a manner as to preserve them indefinitely. However, while the information in the record must be preserved, you do not necessarily have to keep the original paper copy of these records.

Duplication of Permanent Records

If you can safely and successfully convert paper records into another permanent media that is easier to store, the original paper version of the records can be destroyed.^[1] This is where the checks and balances are extremely important. No original permanent public record may be destroyed under the law

unless a majority of the county public records commission agrees.^[2] The records commission should take this review seriously and make certain that the original records were completely and accurately reproduced into a durable medium by the official or his or her contractor before giving approval to destroy the paper. Before destruction, there are also notice requirements. There are two major types of alternative storage formats for records that are recognized in the law: photographic and electronic. However, the State Library and Archives does not consider any existing format for electronic records to be of permanent archival quality. See Alternative Storage Formats for more information

Notice Requirements in Destroying Original Copies of Permanent Records

Even after authorization for destruction of original paper records has been granted by the county public records commission, no *permanent value* record may be destroyed until notice is given to the Tennessee State Library and Archives of the intent to do so. Notice is to be given at least 90 days prior to destroying the records.^[3] Upon receiving notice, the staff of the state archives is directed to examine the records approved for destruction and take into its possession any records believed by the state archivist to be of historical value for permanent preservation. If the records commission receives no reply after nine months from the date of providing notice to the Tennessee State Library and Archives of the intent to destroy records, it may proceed with the destruction of the records described in the notice.^[4] However, county officials should note that the Tennessee State Library and Archives considers the wisdom of this practice to be very questionable and should only be used in rare cases if ever.

[1] T.C.A. § 10-7-406.

[2] T.C.A. § 10-7-404(a).

[3] T.C.A. § 10-7-413(a).

[4] T.C.A. § 10-7-413(a).

Methods of Destruction

Reference Number: CTAS-1193

This may seem to be a simple question, but officials often ask "how should I destroy a record?" For many working papers and some temporary records of an office, tossing them in the trash, or better yet, recycling them, is appropriate. However, if there is a possibility that confidential information is included in the records, they should be disposed of in a manner that obliterates this information such as shredding or burning.^[1] The employees of your office would probably prefer that old temporary payroll records of your office which may contain their social security numbers not be put into a trash bin where someone could sift through them. Similarly, even though the information may be public while it is in your custody, many citizens would prefer that taxpayer records, vehicle registrations and other county records are obliterated when they leave your custody and don't end up blowing around in a landfill for anyone to find. Computer records that are eligible for destruction should be fully deleted with storage disks destroyed, reformatted or over-written with new information to eliminate traces of the old files.

[1] See Op. Tenn. Att'y Gen. No. 01-040 (March 19, 2001).

Special Considerations

Reference Number: CTAS-1194

Various law provides for some special considerations for certain records or types of records. These requirements should be considered when an official or the public records commission is making decisions about how to manage or dispose of these records

Financial Records and Audits

Reference Number: CTAS-1195

One important group of such records are those financial records that are needed for an audit. Most financial records of county offices are temporary records that must always be kept at least as long as is required for audit purposes. Regardless of whether or not an official thinks a financial or accounting record has served its useful purpose, it cannot be destroyed if the office of the comptroller deems it necessary for audit purposes.^[1] You will notice that most financial records listed in the retention schedules have a five-year retention period. This standard is based on the recommendation of the Division of County Audit

In the Office of the Comptroller. Records that are important for audits need to be maintained through the time of the audit plus about three years afterwards in case any problems turn up. Formerly, the retention period for these records was based on keeping them for three years after the audit is complete. Since it was often difficult for a local official to know when an audit became final, the retention period was changed to five years from the date of creation of the record. This gives the official a definite time period to work from and also allows continuous destruction of financial records rather than lumping all records from a fiscal year together with a single retention date. Generally, this five-year period should suffice; however, if directed by the comptroller's office to preserve records for a longer period due to an ongoing audit investigation or some other unusual circumstance, the local official should comply.^[2]

^[1] T.C.A. § 10-7-404(a).

^[2] T.C.A. § 10-7-404(a).

Exhibits and Evidence in Court Cases

Reference Number: CTAS-1196

The law includes a number of special considerations for materials which have become evidence and exhibits in judicial proceedings. Although some of these materials are technically not "records" this information is related to records management for court clerks. Some of this information also appears in the retention schedules for court clerks. Exhibits are treated differently depending on whether they are documents or some other kind of physical evidence or firearms.

Documents

Unless local rules of court provide otherwise, the clerk can destroy certain records under the direction and order of the judge once the case has been finally disposed of for a period of 10 years. "Finally disposed of" means judgment has been entered and the appeal times have lapsed for all parties. The clerk has to retain the pleadings, original process and original opinion, original rules, appearance and execution dockets, minute books, and plat or plan books as permanent records. But all other records, dockets, books, ledgers and documents can be destroyed pursuant to a court order.^[1] In civil cases, the 10-year period is shortened for certain types of records. A judge may order the clerk to destroy discovery materials, briefs, cost bonds, subpoenas and other temporary records in civil cases three years after the final disposition of the case.^[2]

In addition to these procedures, clerks need to comply with T.C.A. § 18-1-204. That statute requires them to notify the Tennessee State Library and Archives of the records they intend to destroy and give them 90 days to examine and remove any significant historical records if they so choose. Also, once they get an order for destruction of records from their judge, the clerks should take the order to the records commission for approval prior to destruction pursuant to T.C.A. § 10-7-406.

For Physical Evidence Other than Documents and Firearms

Physical evidence has a more complicated set of procedures, but the good news is that you can destroy it sooner. If evidence is used in a case, once the case comes to judgment or conclusion and once all appeals have been settled, the clerk is to give 30 days notice to the attorneys of record in the case that they can come pick up any thing that belongs to them or their clients. After 30 days, the clerk can dispose of the evidence by following the procedures in T.C.A. § 18-1-206(a)(2)-(7). This statute requires the clerk to make an inventory of the evidence to be destroyed with references to the case involved and the term of court in which the evidence was used. The clerk then publishes the inventory for three consecutive weeks in a newspaper of general circulation. Parties who want to object to the disposition of the property or make a claim for it have 30 days to file a petition with the court. Once that time passes, the clerk gives the inventory (and any petitions people may have filed) to the court for the judge to approve or reject each item on the list and decide if it should be—

1. Returned to the owner or the owner's attorney;
2. Preserved by an organization for historical purposes;
3. Sold; or
4. Destroyed.

The clerk then gives the court order and the items to be disposed of to the sheriff. Depending on the disposition ordered for the item, the sheriff then delivers the items to their owners or to historical organizations or advertizes and sells the items or destroys them and files an affidavit concerning the destruction of the items with the court.

For Firearms

If a court clerk has exhibits in his or her possession that are firearms they should be disposed of in accordance with the procedures spelled out in T.C.A. §§ 39-17-1317 and 39-17-1318.

[1] T.C.A. § 18-1-202.

[2] T.C.A. § 18-1-202(b).

Other Miscellaneous Special Considerations

Reference Number: CTAS-1197

Records and documents of proceedings in a court of record can only be destroyed after a judge has issued an order authorizing their destruction.^[1] Regardless of who approves it however, the law explicitly prohibits the destruction of any original process in a civil action or criminal proceeding.^[2] Records pertaining to mortgages and deeds of trust on personal property and chattel mortgages can only be destroyed after the term of the mortgage has expired and all conditions have been met and the register approves the destruction of the record.^[3] Finally, no record of a county office or a court of record can be destroyed if the county official or judge who has custody of the record objects to its destruction.^[4] Court case files commonly contain material that is rich in historical and genealogical significance. If the county has an archive or is considering establishing one, these records are excellent candidates to be preserved for their historical value.

[1] T.C.A. § 18-1-202.

[2] T.C.A. § 10-7-404(c).

[3] T.C.A. § 10-7-412.

[4] T.C.A. § 10-7-404.

Alternative Storage Formats

Reference Number: CTAS-205

Paper is not the only medium in which records can be stored. Many county offices are choosing to store records in either photographic (microfilm, microfiche, etc.) or electronic media for a variety of purposes and reasons. Each medium offers different advantages and disadvantages. Counties should thoroughly research either system before investing revenue and entrusting its vital records to a different storage media.

Alternative Formats and Temporary Records

Reference Number: CTAS-1198

Generally, if you are only keeping a record for five years or less, it is not cost-efficient to microfilm the original paper records or convert them to other media. But certain records that are "temporary" actually have a rather lengthy retention period. Many court records need to be kept 10 years and employee earning records that may be used for computing retirement benefits are kept for the approximate life of the employee. Even though these records do not have to be kept permanently, you may find it useful to convert them to other more compact formats for storage and destroy the paper originals shortly after they were created. Microfilming or electronic storage of these long-term temporary records can be ideal solutions to storage space problems. Once the records have been duplicated, apply to the County Public Records Commission for approval to destroy the original paper document. Approval of the records commission is necessary prior to the destruction of the original of any record that is still within its retention period.^[1] It is not necessary to notify the Tennessee State Library and Archives of the destruction of original copies of temporary value records.^[2]

Some local government offices are trying to do away with paper versions of some temporary records altogether, creating and storing the records solely in an electronic format. The law authorizes local governments officials to keep any records that the laws requires them to keep in electronic format rather than bound books or paper records.^[3] However, certain stringent guidelines must be met in order to keep the records this way and local officials are strongly cautioned not to keep permanent records solely in an electronic format. Many officials have a dual system for some of their records. Using scanning or

imaging technology, some offices create, then primarily use the electronic versions of their records even though paper or microfilm versions are also created and used as a security copy or for long term storage.

[1] T.C.A. § 10-7-404(a).

[2] T.C.A. § 10-7-413.

[3] T.C.A. § 10-7-121. But see T.C.A. § 49-2-301 that requires directors of schools to keep some records in both paper and electronic formats.

Microfilm

Reference Number: CTAS-1199

The process of microfilming^[1] is more than 150 years old. "In 1839 the French began to use micro-photography, primarily for placing small portraits into locketts. During the Franco-Prussian War of 1870-1871, the French filmed documents and used carrier pigeons to transport the filmed information to unoccupied portions of France."^[2] Comparatively, this makes the process of microfilming seem ancient compared to newer electronic formats for record keeping. There are several well-documented advantages of microfilm; control, convenience, space savings, protection, and the quick entry of full text.^[3] Microfilming can offer as much as a 98 percent reduction in storage space over storing records in their original paper format.^[4] By having a back-up copy of microfilm stored off-site, governments can almost immediately recover from any disaster or occurrence that damages its vital paper records. Produced correctly, microfilm is considered to be archival quality meaning it is a suitable format for storing permanent retention documents.

But microfilm also has its disadvantages. No alternative format is going to be a perfect solution for all your records management problems. Microfilming is not cheap. It is a labor intensive process that requires a level of expertise from the person doing the work. Additionally, if microfilm is not properly produced, developed and stored, it will not stand the test of time. It may be difficult to recognize deterioration of microfilm records or mistakes in the filming process until it is too late to correct the problem. There is anecdotal evidence of some cases where a person filming records made the error of skipping over many pages of text which were subsequently lost forever when the paper originals were destroyed upon the completion of filming. For these reasons, it is vitally important that any county office relying on microfilm have a strict quality control procedure in place to make sure the film adequately captures the content of the paper records prior to their destruction.

[1] The term microfilm or microfilming will be used generally to discuss the various micro-photographic processes available.

[2] *Using Microfilm*, Julian L. Mims, CRM, issued by the National Association of Government Archives and Records Administrators (February, 1992), p. 1.

[3] *Using Microfilm*, p.1.

[4] *Using Microfilm*, p.1.

State Laws Regarding the Photographic Preservation of Records

Reference Number: CTAS-1200

County public records commissions may authorize the destruction of original records that have been reproduced through photocopying, photostating, filming, microfilming, or other micro-photographic process.^[1] When doing so, the records must be reproduced in duplicate. The reproduction must result in permanent records of a quality at least as good as is prescribed by the minimum standards for permanent photographic records as established by the Bureau of Standards of the United States government (now the National Institute for Standards Testing). One copy of the reproduction shall be stored for safekeeping in a place selected by the county public records commission and concurred in by the county legislative body. If proper facilities are available, the location should be within Tennessee. The storage location should be selected based on the goal of preserving the records from fire and all other hazards. The other copy of the records must be kept in an office in the county accessible to the public and to county officers,

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
before him relating the law as applied to the case and giving reasons on which the judgment is based.		
04-006 Summonses —A writ notifying a person that a court action has been commenced against him, and that he is required to appear on a day named and answer the complaint in such action.	Permanent record.	T.C.A. § 18-1-202(a).
04-007 Trial Exhibits and Evidence —Any documentary evidence and exhibits presented at trial that become part of the record of the case. For physical evidence, see T.C.A. § 18-1-206.	Retain 10 years after final judgment, then destroy unless local rule of court provides for a different retention period.	T.C.A. § 18-1-202(a).
B. Bonds		
04-008 Appearance and Bail Bond Records —Bonds and recordings of bonds executed by defendants and sureties showing defendant's name, name of person serving as surety, amount of bond, and signatures of the accused and sureties.		
04-009 Attachment and Injunction Bonds —Bonds executed in attachment and injunction cases insuring defendant against damages likely to occur as a result of wrongful suing, showing date of bond, names of principal and sureties, amount of bond, condition of the obligation, and signatures of principal and sureties.	Retain 10 years after final judgment, then destroy.	T.C.A. § 18-1-202(a).
04-010 Cost Bonds, Civil Cases —Bonds executed to insure payment of court costs, showing names of plaintiff and defendant, amount and date of bond, condition of the obligation, and signatures of principal and sureties.	Retain three years after final judgment, then destroy.	T.C.A. § 18-1-202(b).
04-011 Miscellaneous Bond Books —Receivers', indemnifying, appearance, cost, refunding, replevin, etc., bonds, showing names of principal and sureties, style of case, amount and date of bond, condition of the obligation, and signatures of principal and sureties.	Retain 10 years after release, replacement or expiration of all bonds in book, then destroy.	T.C.A. § 18-1-202(a).
04-012(a) Prosecution Bonds —Bonds executed by persons instituting suits in circuit and criminal court, by virtue of which they assume all responsibility of judgment and costs that may be taxed to them, show	Retain 10 years after final judgment, then destroy.	T.C.A. § 18-1-202(a).
04-012(b) Bondsman Reports - Reports from bonding companies under T.C.A. § 40-11-303.	Retain 10 years, then destroy.	Keep record for audit purposes and a reasonable period to allow Judge to investigate bondsmen.
C. Criminal Action Files (See also Process, Court Orders, Writs, Etc.)		
04-013 Criminal Actions, Record of —All original process, case papers and documents in criminal cases, including judge's orders, in both felony and misdemeanor cases.	Permanent record.	T.C.A. § 18-1-202(a).
04-014 Detainer Warrants —Instrument authorizing the keeper of a prison to keep a person in custody. Shows name of person in custody, length of time to be detained, and signature of issuing official. Exception: Records of DUI offenses.	Retain 10 years, then destroy; however, records of DUI convictions should be kept 20 years.	T.C.A. § 18-1-202(a) T.C.A. § 55-10-403(a)(3) allows for prior DUI convictions up to 20 years before an offense to be used to enhance sentencing as a multiple offender.
04-015 Indictments or Presentments by Grand	Permanent record.	T.C.A. § 18-1-202(a).

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
Jury— These records show name of defendant, return date of indictment, and nature of offense charged therein.		
04-016 Recordings of Criminal Proceedings— Verbatim recordings of preliminary hearings entry of plea by the defendant as required by Tenn. Rules of Criminal Procedure, Rules 5.1 and 11.	Retain 10 years after final judgment and exhaustion of appeals, T.C.A. §§ 18-1-201 and 18-1-202(a). then get court order to authorize destruction.	
04-017 Summons, Criminal— A writ notifying a person that a criminal proceeding has commenced against him and that he is required to appear in court at a stated time and place.	Permanent record.	T.C.A. § 18-1-202(a).
D. Dockets [NOTE: Dockets are kept in varying formats in different courts. Not all of the following dockets may be found or kept in your court. Much of the information may be combined into one docket or maybe be kept electronically pursuant to T.C.A. § 10-7-121. Except for Mental Health and Adoption Dockets, most other dockets may now consolidated into a single docket. The fact that separate listings are given for dockets below does not mean that these records must be kept separately.]		
04-018 Alimony and Child Support Dockets/ Ledgers— Docket/ledger shows date alimony or child support paid to court clerk, date paid out by him or her, name of person to whom paid, and amount.	Retain 25 years after last entry, then destroy.	Retention period based on period of dependency of minor.
04-019 Appeal Dockets— Record of cases going to appellate courts showing style of case, date, and ruling of the court; may show court costs.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).
04-020 Appearance and Rule Dockets— Record of first appearance of all causes in court, showing date filed, names of attorneys, style of case, security, and action taken.	Permanent record.	T.C.A. § 18-1-202(a).
04-021 Bar Dockets (aka Hearing Dockets, Trial Dockets, or Judge's Docket Sheets)— A record prepared for the use of the judge, clerk and bar, listing all cases set for trial in court, showing date of court term, case number, names of attorneys, plaintiff, defendant, date case filed; may also show page and volume number or recordation in minute book. This is basically a working paper, but may have record value in some counties.	As long as the information in this record series is found in other records which are retained for 10 years, these are considered working papers records and may be destroyed when no longer useful.	T.C.A. § 10-7-406(b).
04-022 Delinquent Tax Docket Book— Record of property taken over by the county, showing description of all properties sold at a tax sale, whether redeemed or not, by whom redeemed, amount of taxes, date, and decree of court relevant to property.	If the county maintains this information in this format, retain as a permanent record.	These records could have bearing on land title and therefore need to be maintained.
04-023 Execution Dockets and Indexes— A financial record of cases tried, style of case, nature of action, amount of judgment and cost, and amount and date paid.	Permanent record.	T.C.A. § 18-1-202(a).
04-024 Grand Jury Dockets— Docket shows name of defendant, offense charged, and date of indictment or no true bill.	Retain 10 years, after last entry, then destroy.	T.C.A. § 18-1-202(a).
04-025 Motion Dockets— Docket shows names of plaintiff and defendant, date motion filed, nature of motion, and remarks.	As long as information in these records is found in other records which are retained for	T.C.A. § 10-7-406(b).

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
	10 years, these are considered working papers and may be destroyed when no longer useful.	
04-026 Rule Dockets and Indexes — A record of original processes issued and filed incident to cases tried in court, showing number of case, date and hour filed, names of complainant, respondent, and solicitors; also date and nature of process, names of bondsmen, date process served, note of officer's return, and rules and orders of the court.	Permanent record.	T.C.A. § 18-1-202(a).
04-027 Worker's Compensation Dockets —Docket shows name of person applying for compensation, date of application, date and amount of judgment, and accrued costs.	Permanent record.	T.C.A. § 50-6-225.
E. Financial Records —The disposition schedule for many of the financial records of the court can be found in schedule number 15 in this manual, entitled General Accounting and Purchasing Records. The items included below are those financial items unique to the office of the court clerk.		
04-028 Bills of Costs —Bills of costs submitted for payment showing names of plaintiff and defendant, date of initial action, items of cost, amount of each, date process issued, signature of official issuing warrant, date filed with court for trial, clerk's certification, date judgment paid, and number of warrant issued in payment.	If information in this record series is found elsewhere, destroy when no longer useful. If information is kept electronically, keep paper records five years.	Working paper that can be destroyed in accordance with rules of the Public Records Commission (T.C.A. § 10-7-406(b)). Five year retention period is based on audit requirements (T.C.A. § 10-7-404(a)).
04-029 Case Ledgers —Record of case funds received and distributed.	Retain 25 years after last entry, then destroy.	Keep for audit purposes (T.C.A. § 10-7-404(a)).
04-030 Fee Reports —Reports of fees collected by the clerk showing date of report, date of collection, from whom received, purpose of payment, date of report, and signature of clerk. This record is now obsolete.	Retain 10 years after clerk's tenure is broken, then destroy.	Keep for audit purposes (T.C.A. § 10-7-404(a)).
04-031 General Account Ledgers (refer to execution docket) —Ledger accounts of funds received from sales of property in settlement of estates, alimony payments, and payments of judgments and court costs; money distributed by the clerk showing style and number of case, date of collection, name of person from whom received, and amount; date of payment, name of payee, number of check issued, and amount; may show cash book and page number from which entry was posted.	Permanent record.	May have bearing on land title.
04-032 Payroll Records	See separate retention schedule in this manual for employment records.	
04-033 Receipt Books, Delinquent Tax —Duplicates of receipts issued for payment of delinquent taxes, showing receipt number, date issued, name of taxpayer, amount, year of assessment, district number, number of acres of farm land, number of town lots, valuation, personal property valuation, amounts of state and county taxes, interest, penalty, and total amount of	Retain 10 years after issuance of last receipt, then destroy.	T.C.A. § 18-1-202.

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
<p>payments.</p> <p>04-034 Unclaimed Funds, Record of—Record of funds in hands of clerk unclaimed for seven years and turned over to state, showing style of case, case number, respondent, and amount.</p>	Retain 10 years, then destroy.	Keep record for audit purposes and a reasonable period to allow interested parties to make inquiries.
F. Index Books		
<p>04-035 Divorce and Adoption Cases, Index—Indexes to original divorce and adoption cases, showing names of parties, style of case, case number, and file container in which record is filed. Note: Record series may contain confidential information.</p>	Permanent record.	Necessary for use of other permanent records.
<p>04-036 General Index—Index to all original case papers, showing file number and names of complainant and respondent.</p>	Permanent record.	Necessary for use of other permanent records.
<p>04-037 Hospital Lien Index—Index for the hospital lien book, referencing patient's name and hospital or operator.</p>	Permanent record.	Necessary for use of other permanent records.
<p>04-038 Judgment Index Books (see Divorce and Adoption cases, Indexes)</p>	Permanent record.	Necessary for use of other permanent records.
<p>04-039 Minute Books and Indexes—Minutes show the course and proceedings in all cases from their origin to termination, giving name of defendant, offense charged, date of trial, verdict of jury, and sentence of the court.</p>	Permanent record.	Necessary for use of other permanent records.
G. Process, Court Orders, Writs, Etc.		
<p>04-040 Affidavit of Complaint—A written statement alleging that a person has committed an offense and alleging the essential facts instituting the offense charged made upon oath before a magistrate or court clerk.</p>	Permanent record.	T.C.A. § 18-1-202(a).
<p>04-041 Attachments on Personal Property—Writs issued during court action to seize the personal property of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover.</p>	Retain 10 years after final settlement of case, then destroy.	T.C.A. § 18-1-202(a).
<p>04-042 Attachments on Real Property—Writs issued during court action to seize the real property of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover.</p>	Retain 10 years after final settlement of case, then destroy.	T.C.A. § 18-1-202(a).
<p>04-043 Capias—The general name for several types of writs which require an officer to take the body of the defendant into custody; they are writs of attachment or arrest.</p>	Permanent record.	This record is in the nature of original process (T.C.A. § 18-1-202(a)).
<p>04-044 Criminal Citation—A demand that the defendant cited appear in court at a stated time to answer to a misdemeanor charge. The citation states the name and address of the person cited, the name of the issuing officer and the offense charged.</p>	Retain for 10 years, then destroy.	T.C.A. § 18-1-202(a).
<p>04-045 Executions—Writs or orders providing that</p>	Retain 10 years after	T.C.A. § 18-1-202(a).

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
an act or course of conduct be carried out.	issuance, then destroy.	
04-046 Fieri Facias —Court orders to levy execution on property, sell the same, and apply the proceeds to the satisfaction of judgments in court; shows names of complainant and respondent, description of property, and amount involved; an execution.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-047 Garnishments —Process whereby defendant's property in possession or control of another is applied to payment of defendant's debt. Shows names of court, plaintiff, and defendant, total costs, and reporting date.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-048 Habeas Corpus, Writs of —Writs issued to change the place of trial, to move from custody of one court to another, directing that a detained person be produced, etc.	Permanent record.	This record is in the nature of original process (T.C.A. § 18-1-202(a)).
04-049 Mittimus —Commitments to jail, showing name of person committed, offense charged, name of prosecutor, amount of bail, date, and signature of clerk of the court.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-050 Replevin Warrants (Writs of Possession) —Writs giving authority to recover goods or chattels claimed to be wrongfully taken or kept.	Permanent record when used as leading process (now obsolete), otherwise retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-051 Search Warrants —A written order issued in the name of the state and directed to a law enforcement officer commanding him to search a specific house, business establishment, or other premise for	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-052 Subpoenas —Copies of summonses to appear in court as witnesses in lawsuits, showing name of person summoned, day and hour to appear, in whose behalf, and signature of the clerk.	In criminal cases, retain 10 years, then destroy; in civil cases, retain three years, then destroy.	T.C.A. § 18-1-202(a)—(b).
04-053 Warrants —Writs issued in both civil and criminal cases requiring an officer of the law to arrest the person named therein and bring him before the court to answer charges of some offense which he is alleged to have committed.	Permanent record.	T.C.A. § 18-1-202(a).
Exception: Unserved Misdemeanor Warrants	Unserved misdemeanor warrants—five years	T.C.A. § 40-6-206.
04-054 Writ of Possession —A writ employed to enforce a judgment to recover possession of land.	Permanent record.	Could have bearing on land title.
H. Reports		
04-055 Audit Reports —Audit reports show name of office, fund or account, account of all receipts and disbursements, date of audit and signature of auditor.	Preserve permanently	Record has historical significance.
04-056 Delinquent Tax Collections Reports —Copies of reports made by the clerk to the cities, county, and state of tax collections in litigation, showing docket number, case number, names of complainant and respondent, amount collected, total, and date of report.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-057 Grand Jury Reports —Record of grand jury actions, showing name of defendant, offense charged, until spread in	Retain 10 years and until spread in	T.C.A. § 18-1-202(a).

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
testimony of witnesses, whether indictment or no true bill is returned, and recommendations.	minutes, then destroy.	
04-058 Litigation Tax Reports —A record of all state and county litigation taxes collected by the clerk showing number of cases and amount received.	Retain 10 years after last entry, then destroy.	Keep for audit purposes (T.C.A. § 10-7-404).
04-059 Revenue Dockets or Reports —Record of reports to the county judge or county mayor of state and county revenue collected by the clerk and remitted to the trustee and state, showing date and source of collection, date reported, certification of clerk, and amounts of taxes, fees, and total. Receipts from trustee and state for funds received may be posted in these volumes.	Retain 10 years after clerk's tenure is broken, then destroy.	Keep for evidence in cases of misappropriation of funds.
04-060 Sale Books or Reports —Record of court land sales, showing name of court, style of case, location and description of property, by what process land was sold, date of sale, name of purchaser, and tax collected.	Permanent record.	Could have bearing on land title.
04-061 Special Commissioners Reports —Reports of special commissioners appointed when property is sold by court.	Permanent record.	Could have bearing on land title.
04-062 Worker's Compensation Payment Records	Retain 10 years after judgment in case, then destroy.	T.C.A. § 18-1-202(a).
I. Other Records		
04-063 Adoption Files —Petitions to the court for the adoption of children, all intermediate proceedings, and final decree of the court, showing, in addition to the text, name and address of petitioner, date of petition, name of child, names of parents or custodian of child, age, date of birth, sex of child, statement of financial status and character of petitioner, and signatures of petitioners, affiants, and judge. Note: Record series contains confidential information.	Permanent record.	T.C.A. § 36-1-111 Has historical value and potentially significant in inheritance issues.
04-064 Bastardy Proceedings, Records of —Original papers incident to proceedings in bastardy cases including warrants, bills of cost, bonds, and court decrees showing names of plaintiff and defendant, date of trial, nature and purpose of process, and signature of issuing officer.	Permanent record.	Has historical value and potentially significant in inheritance issues.
04-065 Bastardy Cases and Changes of Names, Records of —These records may include petition from subject or subject's parent or guardian seeking name change; also court order showing subject's name, sex, race, date and place of birth, file date, incorrect and correct information, date and signature of judge and acknowledgment of clerk.	Permanent record.	Has historical value and potentially significant in inheritance issues.
04-066 Domestic Relations Records —Records pertaining to matters such as adoptions, bastardy proceedings, child custody, and divorce.	Permanent record.	Has historical value and potentially significant in inheritance issues.
04-067 Hospital Lien —A verified statement of claim setting forth the name and address of the patient and operator of the hospital, date of admission and discharge, amount claimed to be due and names and addresses of any one believed liable for damages.	Retain for 10 years, then destroy.	Statute of Limitations, T.C.A. § 28-3-110 T.C.A. § 18-1-202.
04-068 Hospital Lien Book —Book in which the clerk enters the date and hour of filing of a hospital lien, name and address of hospital, the operator	Retain for 10 years after last entry, then destroy.	Statute of Limitations, T.C.A. § 28-3-110

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
thereof, the patient, those claimed to be liable and the amount claimed. Releases are noted on the margin of this book.		T.C.A. § 18-1-202.
04-069 In Memoriam Books —Record of deaths of members of local bar.	Permanent record.	Keep for historical value.
04-070 Judgment Books —Record of judgments rendered by the court, showing book and page numbers of rule docket in which case is recorded, number and style, names of plaintiff and defendant, judgment rendered, and amount of costs. This is an obsolete record.	Permanent record.	T.C.A. § 18-1-202(a).
04-071 Jury Books —A record of jurors serving in cases tried before this court, showing date of court, style of case, nature of action or offense charged, and names of jurors.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).
04-072 Jury Commission Records —Jury commission reports from commission to court of names drawn for jury service from jury box, jury cards, etc.	Retain for 10 years, then destroy.	T.C.A. § 18-1-202(a).
04-073 Jury List Book —A book containing a list of names of persons qualified to serve as jurors selected by the jury commissioners.	Retain for 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).
04-074 Land Condemnation Records —Records pertaining to land condemned for road and sewer construction, commercial development, etc.	Permanent record.	Could have bearing on land title.
04-075 Land Sale Newspaper Clippings —Newspaper clippings of chancery court land sales for failure to pay delinquent taxes and for judgments settling estates for minor children, showing place of sale and description of property to be sold. Clippings are pasted in volumes.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).
04-076 Minute Books	See Indexes - Minute Books and Indexes.	
04-077 Naturalization Records —Records of proceedings in the naturalization of aliens including certificates of arrival, declarations of intention, petitions, affidavits of witness who has known the petitioner for at least 5 years, oaths of allegiance, and orders of the court conferring rights and privileges of citizenship upon petitioner.	Permanent record. (These records are not usually found today in Circuit Court records.)	Important for historical purposes and for establishing citizenship.
04-078 Plan and Plat Records —Drawings and blueprints of forms, subdivisions, cemeteries, city lots, and street improvements, showing name of subject, date of drawing, boundaries, scale used, location, name of engineer making survey, name of draftsman, and certificate of registration.	Permanent record.	Could have bearing on land title.
04-079 Receipts for Papers —Record of all files and papers removed from the office, showing date and by whom taken, and date returned.	Retain until all files and papers are returned, then destroy according to rules of the Public Records Commission.	Working paper (T.C.A. § 10-7-406(b)).
04-080 Sale Books —Record of court land sales, showing name of court, style of case, location and description of property, by what process land was sold, date of sale, name of purchaser, and tax collected.	Permanent record.	Could have bearing on land title.
04-081 Sheriff's Receipt Books —Book used by execution clerks to record and control the execution	Retain 10 years after last entry, then	T.C.A. § 18-1-202(a).

Retention Schedule for Circuit and Criminal Court Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
and flow of fieri facias and other process to be returned by sheriff.	destroy.	
04-082 Witness Books —Record of witnesses appearing in court cases, showing date of court term, style of case, names of witnesses for complainant, names of witnesses for respondent, number of days attended, miles traveled, amount due, and date of payment.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).

OBSOLETE RECORDS

04-083 Enrollment Books—Recorded copies of original process incident to civil cases, showing names of plaintiff and defendant, cause of action, dates of trial and disposal of case, nature and text of process filed, and date recorded; may include bills and petitions, answers and pleas, and depositions. This is an obsolete record.

Permanent record. No longer generated. Keep for historical value.

04-084 Retired Cases Dockets—Record of cases disposed of or retired by the court, showing case number, date retired, names of complainant, respondent, and attorneys; also date of filing, rule docket and page number of recordation, dates and text of orders of the court; and volume and page number of recordation in minute book.

Obsolete record no longer in use. Retain 10 years, after last entry, then destroy.

04-085 Subpoena and Commission

Dockets—Record of subpoenas and commissions issued authorizing persons to take depositions, showing date of entry, style of case, nature of action, kind of writ, how served, and disposition of the case.

Obsolete record no longer generated. Retain 10 years after last entry, then destroy.

Clerk and Master Records Retention Schedule

Reference Number: CTAS-2053

Clerk and Master Records. The records included in this schedule are those for the office of the clerk and master. Many of the materials in this schedule will also be important to county clerks that serve as clerks for probate court. They are divided into different sections based on the types of records. Records that may be kept in the same format by several county offices (such as employment records, purchasing records, etc.) will be found listed under topical retention schedules in this manual. Included in this table is a listing of "obsolete" records. Your office should no longer be generating these records. They are still included in the disposition schedule so that anyone discovering those materials in older records of the office will know how to deal with them. To a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record or the frequency of its occurrence. This is particularly true of court records which may vary according to local rule and practice and especially confusing concerning the varying forms of docket books that courts may have utilized over the years. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record, contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record's existence to include it in future revisions of this manual.

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
A. Civil Action Files		
05-001 Briefs —Statements of the case, legal theory and arguments for a party in a case.	Maintain for three years after final disposition of case, then notify parties and destroy.	T.C.A. § 18-1-202(b).
05-002 Chancellor's Opinions —Statements by the chancellor of the decision reached in regard to a cause heard before him relating the law as applied to the case and giving reasons on which the judgment is based.	Permanent record.	T.C.A. § 18-1-202(a).
05-003 Civil Actions, Record of —All original process, pleadings, chancellor's opinions and orders in each civil case, motions, master's reports, affidavits, etc.	Permanent record.	T.C.A. § 18-1-202(a).
05-004 Discovery Records —Interrogatories, depositions and other legal devices to obtain information concerning a case prior to trial.	Maintain for three years after final disposition of the case, then notify parties and destroy.	T.C.A. § 18-1-202(b).
05-005 Doctor's Depositions in Worker's Compensation Cases	See Trial Exhibits and Evidence, below.	
05-006 Summonses —A writ notifying a person that a court action has been commenced against him, and that he is required to appear on a day named and answer the complaint in such action.	Permanent record.	T.C.A. § 18-1-202(a).
05-007 Trial Exhibits and Evidence —Any documentary evidence and exhibits presented at trial that become part of the record of the case. For physical evidence, see T.C.A. § 18-1-206.	Retain 10 years after final judgment, then destroy unless local rule of court provides for a different retention period.	T.C.A. § 18-1-202(a).
B. Bonds		
05-008 Appearance and Bail Bond Records —Bonds and recordings of bonds executed by defendants and sureties showing defendant's name, name of person serving as surety, amount of bond, and signatures of the accused and sureties.	Retain 10 years after final judgment, then destroy.	T.C.A. § 18-1-202(a).
05-009 Attachment and Injunction Bonds —Bonds executed in attachment and injunction cases insuring defendant against damages likely to occur as a result of wrongful suing, showing date of bond, names of principal and sureties, amount of bond, condition of the obligation, and signatures of principal and sureties.	Retain 10 years after final judgment, then destroy.	T.C.A. § 18-1-202(a).
05-010 Cost Bonds, Civil Cases —Bonds executed to insure payment of court costs, showing names of plaintiff and defendant, amount and date of bond, condition of the obligation, and signatures of principal and sureties.	Retain three years after final judgment, then destroy.	T.C.A. § 18-1-202(b).
05-011 Guardian's Bonds —Loose file original bonds executed by guardians to insure the discharge of duties obligations, showing names of estate, guardian, minors, and sureties, amount of bond, date executed, conditions of the obligation, date of approval by the court, and signatures of principal, sureties, and judge.	Retain 10 years after final judgment, then destroy.	T.C.A. § 18-1-202(a).
05-012 Miscellaneous Bond Books —Receivers', indemnifying, appearance,	Retain 10 years after release, replacement or	T.C.A. § 18-1-202(a).

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
cost, refunding, replevin, etc., bonds, showing names of principal and sureties, style of case, amount and date of bond, condition of the obligation, and signatures of principal and sureties.	expiration of all bonds in book, then destroy.	
C. Dockets [Note: Dockets are kept in varying formats in different courts. Not all of the following dockets may be found or kept in your court. Much of the information may be combined into one docket or maybe be kept electronically pursuant to T.C.A. § 10-7-121. Except for Mental Health and Adoption Dockets, most other dockets may now consolidated into a single docket. The fact that separate listings are given for dockets below does not mean that these records must be kept separately.]		
05-013 Alimony and Child Support Dockets & Ledgers —Docket shows date alimony and child support paid to court clerk, date paid out by him or her, name of person to whom paid, and amount.	Retain 25 years after last entry, then destroy.	Retention period based on period of dependency of minor.
05-014 Appeal Dockets —Record of cases going to appellate courts showing style of case, date, and ruling of the court; may show court costs.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).
05-015 Appearance and Rule Dockets —Record of first appearance of all causes in court, showing date filed, names of attorneys, style of case, security, and action taken.	Permanent record.	T.C.A. § 18-1-202(a).
05-016 Bar Dockets (aka Hearing Dockets, Trial Dockets, or Judge's Docket Sheets) —A record prepared for the use of the chancellor, clerk and master and bar, listing all cases set for trial in court, showing date of court term, case number, names of attorneys, plaintiff, defendant, date case filed; may also show page and volume number or recordation in minute book. This is basically a working paper, but may have record value in some counties.	As long as the information in this record series is found in other records which are retained for 10 years, these are considered working papers records and may be destroyed when no longer useful.	T.C.A. § 10-7-406(b).
05-017 Delinquent Tax Docket Book —Record of property taken over by the county, showing description of property, whether redeemed or not, by whom redeemed, amount of taxes, date, and decree of court relevant to property.	If the county maintains this information in this format, retain as a permanent record.	These records could have bearing on land title and therefore need to be maintained.
05-018 Distribution Dockets —Dockets showing the detailed distribution of funds belonging to an estate, etc.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-019 Execution Dockets and Indexes —A financial record of cases tried, showing date or court term, style of case, nature of action, amount of judgment and cost, and amount and date paid.	Permanent record.	T.C.A. § 18-1-202(a).
05-020 Guardian and Trustee Dockets —Record of proceedings pertaining to guardianships and trusteeships showing names of guardians, trustees, minors, trustors, etc., amount of bond, names of sureties, and date executed; may also include dates, letters and orders issued, dates of annual and final settlements, and book and page number of recordings in minute book.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
05-021 Motion Dockets —Docket shows names of plaintiff and defendant, date motion filed, nature of motion, and remarks.	As long as Information in these records is found in other records which are retained for 10 years, these are considered working papers and may be destroyed when no longer useful.	T.C.A. § 10-7-406(b).
05-022 Rule Dockets and Indexes —A record of original processes issued and filed incident to cases tried in court, showing number of case, date and hour filed, names of complainant, respondent, and solicitors; also date and nature of process, names of bondsmen, date process served, note of officer's return, and rules and orders of the court.	Permanent record.	T.C.A. § 18-1-202(a).
05-023 Worker's Compensation Dockets —Docket shows name of person applying for compensation, date of application, date and amount of judgment, and accrued costs.	Permanent record.	T.C.A. § 50-6-225.
D. Financial Records —The disposition schedule for many of the financial records of the court can be found in schedule number 15 in this manual, entitled General Accounting and Purchasing Records. The items included below are those financial records unique to the office of the clerk and master.		
05-024 Fee Books —A record of fees collected by the clerk and master in court litigation, showing date of collection, from whom received, on what account, style of case, and amount collected. This book is no longer used in most counties.	Retain 10 years after clerk's tenure is broken, then destroy. May be obsolete.	T.C.A. § 18-1-202.
05-025 General Account Ledgers (refer to execution docket) —Ledger accounts of funds received from sales of property in settlement of estates, alimony payments, and payments of judgments and court costs; money distributed by the clerk and master showing style and number of case, date of collection, name of person from whom received, and amount; date of payment, name of payee, number of check issued, and amount; may show cash book and page number from which entry was posted.	Permanent record.	May have bearing on land title.
05-026 Investment Ledger —Record of funds belonging to estates and ordered to be invested.	Permanent record.	This record may have significance to the parties for decades.
05-027 Notes —Original notes submitted to the clerk for funds loaned by order of the court, showing date and amount of note, date due, style of case from which funds are loaned, and signatures of principal and sureties; may also be notes executed to the clerk and master as payment for real estate purchased at court sales.	Retain 10 years after payment of note, then destroy.	This record has long term significance to the parties. May also contain information affecting land title.
05-028 Payroll Records	See separate retention schedule in this manual for employment records.	
05-029 Receipt Books —Duplicates of receipts issued for payment of judgments and costs in litigation, showing date of receipt, name of payor, amount and purpose of payment, names of complainant and respondent, and signature of clerk and master.	Retain 10 years after issuance of last receipt, then destroy.	T.C.A. § 18-1-202(a).
05-030 Receipt Books, Delinquent	Retain 10 years after	T.C.A. § 18-1-202(a).

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
Tax —Duplicates of receipts issued for payment of delinquent taxes, showing receipt number, date issued, name of taxpayer, amount, year of assessment, district number, number of acres of farm land, number of town lots, valuation, personal property valuation, amounts of state and county taxes, interest, penalty, and total amount of payments.	Issuance of last receipt, then destroy.	Record kept for audit purposes and a reasonable period to allow interested parties to make inquiries.
05-031 Unclaimed Funds, Record of —Record of funds in hands of clerk unclaimed for 7 years and turned over to state, showing style of case, case number, respondent, and amount.	Retain 10 years, then destroy.	Record kept for audit purposes and a reasonable period to allow interested parties to make inquiries.
E. Guardian and Conservatorship Records		
05-032 Administrator and Guardian Notifications (Appointments), Record of —A record of notification of appointments to guardian and administrators, showing date of official notice, name of ward or estate, and date of final settlement with the court.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-033 Conservator's Bonds —Loose file original bonds executed by conservators to guarantee performance of duties showing names of persons for whom responsible, amount of bond, date executed, conditions of the obligation, approval of the judge, and signatures of principal, sureties, and judge.	Retain 10 years after expiration of bond, then destroy.	T.C.A. § 18-1-202.
05-034 Conservator's Bonds, Record of —Bound original and/or recorded copies of conservator's bonds.	Retain 10 years after expiration of bond, then destroy.	T.C.A. § 18-1-202.
05-035 Conservator's Settlements, Record of —Recorded copies of conservator's settlements with the court showing name of person for whom responsible, name of conservator, date of appointment, receipts and disbursements during the period reported, totals, balance due, date of settlement, acknowledgment and approval of the court, date recorded, and signature of the clerk.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-036 Guardians' Bonds and Letters, Record of —Bound original and/or recorded copies of guardians' bonds. Letters show names of guardian, estate, and minors, order of the court, date issued, and name of the clerk.	Retain 10 years after expiration of bond, then destroy.	T.C.A. § 18-1-202.
05-037 Guardian Files —These files may include orders, petitions, claims, bills of costs, inventories, accounts, receipts, settlements, and recapitulations. All of these records except petitions should be recorded.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-038 Guardian Rule Dockets —Record of all proceedings pertaining to guardianship of minors, showing names of guardian and minors, amount of bond, names of sureties, date executed, date letter of guardianship issued, dates of annual and final settlement by guardian, dates of orders confirming settlements, and book and page number of recording in minute book.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-039 Guardian Settlements, Record of —Recorded copies of settlements filed by	Permanent record.	This record has long term significance to the parties.

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
guardians showing whether partial or final, name of guardian, name of minor, date of report, amounts of receipts and disbursements, name of payee, and purpose of payment.		May also contain information affecting land title.
05-040 Ward Receipts —Show testimony of ward and receipt for all demands against the guardian when ward has become 21 years old. Receipt shows date, name of guardian and ward, and description of items.	Retain 10 years after termination of the guardianship, then destroy.	Retention period established to cover period of time during which a controversy might arise.
F. Index Books		
05-041 Divorce and Adoption Cases, Index —Indexes to original divorce and adoption cases, showing names of parties, style of case, case number, and file container in which record is filed. NOTE: Record series may contain confidential information.	Permanent record.	Necessary for use of other permanent records.
05-042 General Index —Index to all original case papers, showing file number and names of complainant and respondent.	Permanent record.	Necessary for use of other permanent records.
05-043 Guardian Index —Index to guardians showing name of guardian and book and page number of recording.	Permanent record.	Necessary for use of other permanent records.
05-044 Judgment Index Books (see Divorce and Adoption cases, Indexes)	Permanent record.	Necessary for use of other permanent records.
05-045 Minute Books and Indexes —Minutes show the course and proceedings in all cases from their origin to termination, giving name of defendant, offense charged, date of trial, verdict of jury, and sentence of the court.	Permanent record.	Necessary for use of other permanent records.
G. Probate Court Records (transferred to Clerk and Master in most counties)		
05-046 Abstracts of Conveyances —Record of real estate transfers in probate court showing amount of sale, date of transaction, names of parties to the transfer, and dates recorded.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-047 Administrator's Bonds —Loose file original bonds executed by administrators to guarantee the performance of duties, showing names of estate, administrator, sureties, amount of bond, date executed, conditions of the obligation, approval of the judge, and signatures of principal, sureties, and judge.	Retain for 10 years after expiration of bond, then destroy.	T.C.A. § 18-1-202.
05-048 Administrator's Bonds and Letters, Record of —Bound original and/or recorded copies of administrators' bonds; also letters showing names of administrator and estate, order of the court, date issued and name of the clerk. Oaths to perform the will of the deceased, or for faithful performance of duties, may also be included.	Retain for 10 years after expiration of bonds, then destroy.	T.C.A. § 18-1-202.
05-049 Administrator's Files (Wills may be Annexed) —These files may include orders, petitions, claims, bills of cost, inventories, accounts, receipts, settlements, and recapitulations.	Permanent record.	Since these files include orders, preserve permanently (T.C.A. § 18-1-202). It is also necessary to permanently preserve original of all wills.
05-050 Administrator's Rule Dockets —An	Permanent record.	Rule dockets are

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
account of proceedings pertaining to settlements of administrators showing name of administrator, amount of bond, names of sureties, date of letter of administration or statement, book and page number of recordation, dates of partial and final settlements, date of filing, and dates of court orders confirming settlements.	Permanent record.	maintained permanently (T.C.A. § 18-1-202).
05-051 Administrator's Settlements, Record of— Recorded copies of administrators' settlements with the probate court showing name of deceased, name of administrator, date of appointment, book and page number where will is recorded, receipts and disbursements during the period reported, totals, balance due estate, date of settlement, acknowledgment and approval by the court, date recorded, and signature of the clerk.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-052 Estate Receipts of Executors, Administrators, and Clerk— Original receipts taken by the clerk for disbursement of funds incident to estate settlements showing date of receipt, amount and purpose of payment, signature of payee, and source from which funds were derived. Also includes affidavits of heirs who have become of age, acknowledging settlement for their portions of estate involved, showing names of guardian and heir, date and amount of settlement, date of affidavit, and signature of heir. These may be loose files or bound volumes.	Permanent record. Preserve original bound volumes permanently.	This record has long term significance to the parties.
05-053 Estate Sales, Accounts of— Itemized accounts of sales of estates of deceased persons as submitted to the county court by administrators, showing date and nature of all transactions.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title. This record has long term significance to the parties. May also contain information affecting land title.
05-054 Estate Settlement Files	Permanent record.	Information affecting land title.
05-055 Executor's Bonds— Loose file original bonds executed by executors to guarantee the performance of all duties, showing names of principal and sureties, amount of bond, date executed, conditions of the obligation, date of approval by the judge, and signatures of principal, sureties, and judge.	Preserve originals permanently if not microfilmed; if microfilmed, retain 30 years, then destroy.	These records have been determined to have significant historical material.
05-056 Executor's Bonds and Letters Index— Index to executors' bonds and letters showing name of executor and book and page number of recording.	Permanent record.	These records have been determined to have significant historical material.
05-057 Executor's Bonds and Letters, Record of— Bound original and/or recorded copies of executors' bond; also letters showing names of administrator and estate, order of the court, date issued, and name of the clerk. Oaths to perform the will of the deceased, or for faithful performance of duties may also be included.	Preserve originals permanently if not microfilmed; if microfilmed, retain 30 years after last issued bond, then destroy.	These records have been determined to have significant historical material.

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
05-058 Executor's Files —These files may include orders, petitions, claims, bills of costs, inventories, accounts, receipts, settlements, recapitulations, and wills. All of these records except petitions should be recorded.	Preserve originals of all orders, distributed receipts, & inheritance tax receipts not microfilmed; if microfilmed, originals may be destroyed after final settlement. Preserve permanently original of all wills. Retain all other records in file 10 years if not microfilmed, then destroy; if microfilmed, destroy after final settlement of estate.	These records have been determined to have significant historical material. Any court orders must be preserved permanently.
05-059 Executor's Rule Dockets —An account of proceedings pertaining to settlements of executors showing name of administrator or executor, amount of bond, names of sureties, date of letter of administration or testament, book and page number of recordation, dates of partial and final settlements, date of filing, and dates of court orders confirming settlements.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-060 Executor's Settlements, Record of —Recorded copies of executors' partial and final settlements with probate court showing names of estate and executor, date of appointment, book and page number where will is recorded, receipts and disbursements during the reported period, totals, balance due estate, date of settlement, acknowledgment and approval of the court, date recorded, and signature of the clerk.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-061 Homestead, Dower and Dissent Records — Original papers, including petitions to county court asking for appointment of commissioners to set aside homestead and dower sufficient for needs of widow and family pending settlement of estates, oaths of commissioners with signatures, date of oath and signature of county court clerk administering oath, reports of commissioners showing recommendations regarding portion of estate that may be set aside, and itemized list of items to be included, and petition and orders in case where spouse of deceased dissents from the will.	Permanent record.	This record has long term significance to the parties. May also contain information affecting land title.
05-062 Insolvent Estates Proceedings, Record of — Record of proceedings in the settlement of insolvent estates including administrator's suggestion of insolvency, showing names of estate and administrator, date filed, court's order for publication of notice to creditors to file claims; list of claims filed showing date filed, number of claims, name of claimant, date due, and signature of person to whom payment is made.	Permanent record.	Certain of these materials may significantly affect land title and property rights.
05-063 Inventories of Estates, Record of —Recorded inventories of estates of deceased persons listing all property belonging to the estates and value of each item, showing name of	Unless materials are all and obviously of historical significance, retain 10 years, then destroy.	T.C.A. § 18-1-202.

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
<p>administrator, executor, or guardian filing same, date filed, and date sworn to and subscribed before a notary public of the clerk.</p>		
<p>05-064 Land Sales, Record of—Record of land sales authorized by the court at the instance of heirs showing style of case, date of sale, name of purchaser, amount of consideration, date and terms of payment, and distribution of funds received from sale.</p>	Permanent record.	This record has long term significance to the parties. Contains information affecting land title.
<p>05-065 Notes, Record of—Record of notes executed by purchasers of land sold by decree of the court in settlement of estates, showing number of note, date executed, date due, amount of note, district number, names of complainant and respondent, and signatures of purchaser and surety; on reverse side of note a record of payments showing amount, date paid, and signature of the clerk.</p>	Permanent record.	This record has long term significance to the parties. Contains information affecting land title.
<p>05-066 Probate Court Minutes—Recorded minutes of probate court proceedings, including the appointment of administrators, executors, and guardians, estate settlements, probate of wills, adoption and insanity hearings, and the dispatch of all probate matters coming within the jurisdiction of probate court.</p>	Permanent record.	This record has long term significance to the parties. May also have historical significance.
<p>05-067 Realty Transfer Record—Probate Court—Record of real estate transfers showing amount of sales, date of transaction, names of parties to transfer, description of property by metes and bounds, and date recorded.</p>	Permanent record.	This record has long term significance to the parties. Contains information affecting land title.
<p>05-068 Receipt Books (aka Distribution of Estates Books)—Original receipts made to the clerk for money paid out by him in transacting the business of the court. An example: the settlement of estates and the sale of land for purpose of petition, showing date of payment, and clerk's signature. Receipts may be pasted in volume.</p>	Permanent record.	May include important information for tracing land title transfers.
<p>05-069 Receipts, Miscellaneous—Duplicates of receipts issued by the clerk for money received by him in process of settlements with agents of estates, showing date of receipt, amount received, name of payor, purpose of payment, and clerk's signature.</p>	Retain five years, then destroy.	Keep for audit purposes. T.C.A. § 10-7-404(a).
<p>05-070 Rule Dockets—Record of suits for sales of land, partitioning of estates, and habeas corpus proceedings showing names of attorneys, plaintiff, and defendant, process and rules, date petition filed, date set for hearing, subpoenas to answer, date bond filed; may also include decree date of the court and final disposition of the case.</p>	Permanent record.	Rule dockets are retained permanently (T.C.A. § 18-1-202).
<p>05-071 Settlements—See Administrator's Files.</p>	Permanent record.	See Administrator's Files.
<p>05-072 Trustees and Assignees' Bonds and Oaths—</p>	Retain five years after release, replacement or expiration of bond, then destroy.	Maintain for audit purposes (T.C.A. § 10-7-404(a)).
<p>Loose file original bonds of trustees and assignees appointed for benefit of creditors, showing name of appointee, by whom appointed, date and</p>		

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
amount of bond, and signatures of principal and sureties; also oath to perform faithfully all duties imposed by law, to make an inventory of all goods, chattels, lands and other assets conveyed to him, and to return or cause to be filed in the clerk's office an account of all sales, and moneys received, or securities taken; shows acknowledgment of the clerk.		
05-073 Trustees and Assignees' Bonds and Oaths, Record of —Bound original and/or recorded copies of trustees' and assignees' bonds and oaths.	Retain five years after release, replacement or expiration of all bonds in bound volumes, then destroy.	Maintain for audit purposes (T.C.A. § 10-7-404(a)).
05-074 Widows' and Orphans' Provisions, Record of — A record of provisions made by the court for the support of widows and orphans, showing itemized account of commodities and cash provided.	Permanent record.	Record has historical significance.
05-075 Wills —Original wills filed for probate and recording showing name of testator, date instrument executed, names of legatees, provisions for the partition, distribution, and administration of the state, names of witnesses and testator, clerk's notation of the court's action, and book and page number of recordation.	Permanent record.	This record has long term significance to the parties. Contains information affecting land title.
05-076 Wills, Record of —Recorded copies of wills showing name of testator, date instrument executed, names of legatees, provisions for the partition, distribution, and administration of the estate, names of witnesses and testator, date of probation, and approval of the court.	Permanent record.	This record has long term significance to the parties. Contains information affecting land title.
H. Process, Court Orders, Writs, Etc.		
05-077 Attachments on Personal Property —Writs issued during court action to seize the personal property of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover.	Retain 10 years after final settlement of case, then destroy.	T.C.A. § 18-1-202(a).
05-078 Attachments on Real Property —Writs issued during court action to seize the real property of the defendant to be held as security for the satisfaction of such judgment as the plaintiff may recover.	Retain 10 years after final settlement of case, then destroy.	T.C.A. § 18-1-202(a).
05-079 Executions —Writs or orders providing that an act or course of conduct be carried out.	Retain 10 years after issuance, then destroy.	T.C.A. § 18-1-202(a).
05-080 Fieri Facias — Court orders to levy execution on property, sell the same, and apply the proceeds to the satisfaction of judgments in court; shows names of complainant and respondent, description of property, and amount involved; an execution.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
05-081 Garnishments —Process whereby defendant's property in possession or control of another is applied to payment of defendant's debt. Shows names of court, plaintiff, and defendant, total costs, and reporting date.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
05-082 Habeas Corpus, Writs of —Writs issued to change the place of trial, to move from custody	Permanent record.	This record is in the nature of original process (T.C.A.

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
of one court to another, directing that a detained person be produced, etc.		§ 18-1-202(a) 0.
05-083 Replevin Warrants (Writs of Possession) — Writs giving authority to recover goods or chattels claimed to be wrongfully taken or kept.	Permanent record when used as leading process (now obsolete), otherwise retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
05-084 Subpoenas —Copies of summonses to appear in court as witnesses in lawsuits, showing name of person summoned, day and hour to appear, in whose behalf, and signature of the clerk.	In civil cases, retain three years, then destroy.	T.C.A. § 18-1-202(b).
05-085 Warrants —Writs issued in both civil and criminal cases requiring an officer of the law to arrest the person named therein and bring him before the court to answer charges of some offense which he is alleged to have committed.	Permanent record.	T.C.A. § 18-1-202(a).
05-086 Writ of Possession —A writ employed to enforce a judgment to recover possession of land.	Permanent record.	Could have bearing on land title.
05-088 Clerk and Master (Financial) Reports — Reports submitted to the chancellor by the clerk and master on receipts and disbursements of this office, showing date, source, and amount of receipt; also purpose, date, and amount of disbursement, and date reported.	Retain 10 years, then destroy.	Keep for audit purposes (T.C.A. § 10-7-404(a)).
05-089 Delinquent Tax Collections Reports —Copies of reports made by the clerk to the cities, county, and state of tax collections in litigation, showing docket number, case number, names of complainant and respondent, amount collected, total, and date of report.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
05-090 Litigation Tax Reports —A record of all state and county litigation taxes collected by the clerk showing number of cases and amount received.	Retain 10 years after last entry, then destroy.	Keep for audit purposes. T.C.A. § 10-7-404(a).
05-091 Revenue Dockets or Reports —Record of reports to the county judge or county mayor of state and county revenue collected by the clerk and remitted to the trustee and state, showing date and source of collection, date reported, certification of clerk, and amounts of taxes, fees, and total. Receipts from trustee and state for funds received may be posted in these volumes.	Retain 10 years after clerk's tenure is broken, then destroy.	Keep for use as evidence in case of misappropriation of funds.
05-092 Sale Books or Reports —Record of court land sales, showing name of court, style of case, location and description of property, by what process land was sold, date of sale, name of purchaser, and tax collected.	Permanent record.	Could have bearing on land title.
05-093 Special Commissioners Reports —Reports of special commissioners appointed when property is sold by court.	Permanent record.	Could have bearing on land title.
05-094 Worker's Compensation Payment Records	Retain 10 years after judgment in case, then destroy.	T.C.A. § 18-1-202(a).

J. Other Records

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
05-095 Adoption Files —Petitions to the court for the adoption of children, all intermediate proceedings, and final decree of the court, showing, in addition to the text, name and address of petitioner, date of petition, name of child, names of parents or custodian of child, age, date of birth, sex of child, statement of financial status and character of petitioner, and signatures of petitioners, affiants, and judge. Note: Record series contains confidential information.	Permanent record.	T.C.A. § 36-1-111. Has historical value and long term significance to the parties.
05-096 Chambers Minutes and Indexes —Minute books in which are recorded decrees in matters of urgency handed down by chancellor at chambers.	Permanent record.	Has historical value.
05-097 Delinquent Tax Lists —Lists of delinquent real estate taxes, showing name of taxpayer, location and description of property, assessed valuation, amount of taxes due, interest, and penalty; may be posted to delinquent tax dockets.	Destroy after posting to delinquent tax dockets. If not posted to delinquent tax dockets, retain as a permanent record.	Could affect land title.
05-098 In Memoriam Books —Record of deaths of members of local bar.	Permanent record.	Keep for historical value.
05-099 Insanity Proceedings, Record of —Recorded proceedings in insanity inquisitions showing name of patient, suggestion of insanity, name of trial judge, date of trial, sworn statement of examining physicians, statements of witnesses, and final disposition of the case.	Permanent record.	Has long term significance to the parties.
05-100 Insurance Policies —Insurance policies on property held by deed of trust on which loans have been made, and policies naming the clerk and master beneficiary by virtue of his being receiver for the estate, showing name of company, name of agent issuing policy, date of policy, date of expiration, amount of premium, amount of coverage, and description of property covered.	Retain 10 years after expiration or replacement of policy, then destroy.	T.C.A. § 18-1-202(a).
05-101 Land Condemnation Records —Records pertaining to land condemned for road and sewer construction, commercial development, etc.	Permanent record.	Contains information that has bearing on land title.
05-102 Land Records of Partitioning —Original papers relative to suits for the sale of property including orders and decrees, notices of sale of land, lists of assets and liabilities, clerk's reports of sales, notices of publication, and depositions relative thereto.	Permanent record.	Contains information that has bearing on land title.
05-103 Land Sale Newspaper Clippings —Newspaper clippings of chancery court land sales for failure to pay delinquent taxes and for judgments settling estates for minor children, showing place of sale and description of property to be sold. Clippings are pasted in volumes.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).
05-104 Names and Birth Dates Corrected, Records of —These files may contain copies of court orders for correcting names and birth dates. Orders show subject's name, sex, race, date of birth, place of birth, and file date; also incorrect	Preserve file permanently if court order is not recorded; if order is recorded, retain file 10 years, then destroy.	Has long term significance to the parties. May have historical significance (T.C.A. § 18-1-202(a)).

Retention Schedule for the Office of the Clerk and Master

Description of Record	Retention Period	Legal Authority/ Rationale
and correct information, date and signature of county judge, and acknowledgment of the clerk. Copies of State Division of Vital Statistics forms may be filed showing two affidavits of persons knowing subject and documents used in ascertaining birth. File may also contain petition from subject seeking change in name and/or birth.		
05-105 Naturalization Records —Records of proceedings in the naturalization of aliens including certificates of arrival, declarations of intention, petitions, affidavits of witness who has known the petitioner for at least five years, oaths of allegiance, and orders of the court, conferring rights and privileges of citizenship upon petitioner.	Permanent record. (These records are not usually found today in Chancery Court records.)	Important for historical purposes and for establishing citizenship. Has long term significance to the parties.
05-106 Non-support Files —Trial papers incident to action showing name of defendant, date of trial, bill of costs, and warrants issued.	Retain 10 years, then destroy.	T.C.A. § 18-1-202(a).
05-107 Plan and Plat Records —Drawings and blueprints of forms, subdivisions, cemeteries, city lots, and street improvements, showing name of subject, date of drawing, boundaries, scale used, location, name of engineer making survey, name of draftsman, and certificate of registration.	Permanent record.	Contains information that affects land title.
05-108 Publication Books —Book used by the clerk and master to record his issuances of all orders or publications.	Retain 10 years after, then destroy.	T.C.A. § 18-1-202(a).
05-109 Witness Books —Record of witnesses appearing in court cases, showing date of court term, style of case, names of witnesses for complainant, names of witnesses for respondent, number of days attended, miles traveled, amount due, and date of payment.	Retain 10 years after last entry, then destroy.	T.C.A. § 18-1-202(a).

OBSELETE RECORDS OF THE CLERK AND MASTER'S OFFICE

05-110 Enrollment Books —Recorded copies of original process incident to civil cases, showing names of plaintiff and defendant, cause of action, dates of trial and disposal of case, nature and text of process filed, and date recorded; may include bills and petitions, answers and pleas, and depositions. This is an obsolete record.	Keep as a permanent record. No longer generated, but still must be retained.
05-111 Fee Reports —Reports of fees collected by the clerk and master showing date of report, date of collection, from whom received, purpose of payment, date of report, and signature of clerk and master. This record is now obsolete.	Retain 10 years after clerk's tenure is broken, then destroy.
05-112 Judgment Books —Record of judgments rendered by the court, showing book and page numbers of rule docket in which case is recorded, number and style, names of plaintiff and defendant, judgment rendered, and amount of costs. This is an obsolete record.	Permanent record. No longer generated, but must be maintained.
05-113 Retired Cases Dockets —Record of cases disposed of or retired by the court, showing case number, date retired, names of complainant, respondent, and attorneys; also date of filing, rule docket and page number of recordation, dates and text of orders of the court; and volume and page number of recordation in minute book.	Obsolete record no longer in use. Retain 10 years after last entry, then destroy.
05-114 Subpoena and Commission Dockets —Record of subpoenas and commissions issued authorizing persons to take depositions, showing date of entry, style of case, nature of action, kind of writ, how served, and	Obsolete record no longer generated. Return 10 years after last entry, then destroy.

OBSOLETE RECORDS OF THE CLERK AND MASTER'S OFFICE

disposition of the case.

County Clerk Records Retention Schedule

Reference Number: CTAS-2050

County Clerk Records. The records included in this schedule are only those specific to the office of the county clerk. Records that may be kept in the same format by several county offices (such as employment records, purchasing records, etc.) will be found listed under topical retention schedules in this manual. As various types of taxes and registers have come and gone over the decades and as the duties of the county clerk changed, many functions and records of this office in particular have become obsolete. Included in this table is a listing of "obsolete" records. Your office should no longer be generating these records. They are still included in the disposition schedule so that anyone discovering those materials in older records of the office will know how to deal with them. As a repository of many basic county records, the office of the county clerk maintains a large number of records that have historical significance and must be kept permanently. When using this table, keep in mind that to a certain extent, the records kept by county offices vary from county to county in either the format of record kept, the name given to the record, or the frequency of its occurrence. The fact that a certain record is listed in this schedule does not necessarily indicate that you should have it in your office. It may be a format for record-keeping that was never utilized in your county, or you may keep the record under a different name. If you have records in your office that are not listed in this schedule by name, check the descriptions of the records to see if we may have called it by a different term. If you still cannot locate any entry relative to the record, contact us at the County Technical Assistance Service for guidance in determining the proper disposition of the record and so that we can make note of that record's existence to include it in future revisions of this manual.

Retention Schedule for County Clerks

Description of Record	Retention Period	Legal Authority/ Rationale
02-001 Accounting Records — Monthly statements from banks in which county clerk's funds are deposited, showing dates of statements, names of banks, dates and amounts of deposits, dates and amounts of withdrawals, and balances.	Retain five years, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).
02-002 Animal Pedigrees, Record of —Animal pedigrees filed with and registered by the clerk showing name, kind of animal, name of owner, pertinent information, certificate of registration showing date of registration, and signature of clerk.	Permanent record. (Note however, that few offices are doing this.)	Necessary for checking lineage of animals.
02-003 Appropriation Dockets —Record of appropriations made by the county legislative body for maintenance of county offices and institutions, and for payment of claims against the county, showing date of session, date claim filed, to whom payable, nature of claim or purpose of appropriation, and amount.	Retain five years after last entry, then destroy.	Keep for audit purposes T.C.A. § 10-7-404(a).
02-004 Audit Reports —Audit reports of the office of county mayor, county judge, trustee, county clerk, register, circuit court clerk, clerk and master, sheriff, school superintendent, highway commissioner, and other county offices. Audit reports show name of office, name of fund or account, account of all receipts and disbursements, date of audit, and signature of auditor.	Preserve permanently one copy of all audits.	Keep for historical purposes
02-005 Automobile Dealer License Books — Recorded copies of original licenses issued	Retain five years after all licenses in book have	Keep for audit purposes T.C.A. § 10-7-404(a).

SPECIAL MASTER, SPECIAL COMMISSIONER OR RECEIVER

Special Master, Special Commissioner or Receiver

In Chancery or Circuit Court, a Judge or Chancellor may appoint someone to be a special master, a special commissioner or a receiver to perform a specific purpose on behalf of the court. The court order appointing such a person should also detail the duties or the expectations required of this person. Often times the person named in such a capacity is the court clerk, but should not be considered a given. Any competent person can serve on behalf of the court depending on the needs of a particular case; however, the court usually has a comfort level with appointing the clerk in order to have a reliable agent to fulfill the expectations of the court.

A clerk can be directed by a court order to perform a specific task that the court feels is in the scope of their official duties. This is usually of an investigative nature and is normally handled during regular office hours. The court normally expects a report from the clerk and the payment for such services can be assessed as court cost with the fee being applied to that clerk's official fees within the office.

A clerk, or anyone the court feels is capable, can be appointed to perform tasks that the court feels are outside their scope of their official duties and can cover a range of possibilities. Most of the time it is to sell property one or more of the following reasons(according to Gibson's Suits in Chancery): 1) to enforce a lien or trust created by contract, operation of law or court decree; 2) for partition among tenants in common; 3) for reinvestment in cases of persons under a disability; 4) to pay the debts of a decedent; 5) to wind of an insolvent or dissolved corporation; 6) to pay debts of a fraudulent vendor; 7) where property has been attached; 8) where, in another case, the sale of the property is necessary or proper for enforcement of the rights of any party; and 9) where the property has been levied on by attachment or execution and for some reason has not been sold by the officer levying the writ, in domestic relations cases. The court also expects a report from the special commissioner or master and payment for such services is assessed as cost and usually paid directly to the special commissioner or master.

In 2022, the "Uniform Partition of Heirs Property Act" passed and made changes to lawsuits filed pursuant to Title 29, Chapter 27, however, this act does not make references to petitions which are filed pursuant to the probate statutes in Title 30. The "Uniform Partition of Heirs Property Act" adds layers to the previous partition process with the requirement of a certain percentage to be held by relative cotenants, additional hearings for value determination and sale procedure. Reference to the entire act would be necessary if a partition action is filed pursuant to Title 29, Chapter 27, in order to comply with all the requirements.

A special commissioner, master or receiver can be a surveyor, appraiser, certified public accountant, clerk of court or anyone with a particular set of skills that will aid in resolving the issue or issues that are before the court.

RESOURCES

- AOC Contacts
- Staff Directory
- Tennessee Clerks of Court Conference
- Judicial Boards, Commissions and Committees
- Court of the Judiciary
- CTAS Training Resources

DIVISION TITLE	DIVISION/FUNCTION	CONTACT	CONTACT EMAIL	CONTACT EXT.
Executive	Executive - Overall AOC Leadership	Michelle Long - Director	Michelle.Long@tncourts.gov	5100
		Rachel Harmon - Deputy Director	Rachel.Harmon@tncourts.gov	1150
Access Innovation & Community Engagement		Ann Louise Wirthlin - Division Director	Anne.Louise.Wirthlin@tncourts.gov	2880
	Access to Justice	ATJInfo@tncourts.gov	Anne.Louise.Wirthlin@tncourts.gov	2880
	Interpreter Services	Ryan Mouser	Ryan.Mouser@tncourts.gov	1410
		website	https://www.tncourts.gov/programs/court-interpreters/resources-interpreters	
	Expungement Clinic		Expungement.Clinic@tncourts.gov	
Communications & Judicial Resources		Barbara Peck - Division Director	Barbara.Peck@tncourts.gov	1400
	Court Room (Media)			
	Courtroom Security Report			
	Grants			
Fiscal Services		Dalton Hensley - Division Director	Dalton.Hensley@tncourts.gov	1460
	Accounts Payable Court Clerks (Conference)	Debbie Lanier	Debbie.Lanier@tncourts.gov	1440
	Expert Witness Payments	Laura Hood	Laura.Hood@tncourts.gov	1820
Intergovernmental Affairs		Michelle Consiglio-Young - Division Director	Michelle.Consiglio-Young@tncourts.gov	3150
	Legislation	Michelle Consiglio-Young	Michelle.Consiglio-Young@tncourts.gov	3150
		Charlie Baldwin	Charlie.Baldwin@tncourts.gov	1955
	Juvenile Data Collection	Stephanie Etheridge	Stephanie.Etheridge@tncourts.gov	1111
		Lauren Tahash	Lauren.Tahash@tncourts.gov	2032
	TN Council of Juvenile and Family Court Judges	Stephanie Etheridge	Stephanie.Etheridge@tncourts.gov	1111
	Safe Baby Courts	Stephanie Etheridge	Stephanie.Etheridge@tncourts.gov	1111
	Three Judge Panel	Jordan Emily	Jordan.Emily@tncourts.gov	1945
		Danielle Lane	Danielle.Lane@tncourts.gov	1935
Legal Services and Judicial Department		John Coke - Division Director	John.Coke@tncourts.gov	1750
	Education Programs (Clerks of Court Conference)	Ariel Borne	Ariel.Borne@tncourts.gov	1900
		Carrie Taylor	Carrie.Taylor@tncourts.gov	1920
		John Crawford - Education Manager	John.Crawford@tncourts.gov	1110
	Designation of Judge Request		designationrequests@tncourts.gov	
	Criminal Justice Handbooks	Deborah Sandlin	Deborah.Sandlin@tncourts.gov	2031
			https://www.tncourts.gov/forms-publications/criminal-justice-handbook-order-form	
		Website		
	Local Rules (Trial Courts)	John Coke	John.Coke@tncourts.gov	
	Court Reporters	Connie Turner	Connie.Turner@tncourts.gov	1260
Information Technology Services		Brandon Bowers - Division Director	Brandon.Bowers@tncourts.gov	2010
	Administrative Fee for Indigent Defendants	Patti Marquardt	Patti.Marquardt@tncourts.gov	2266
	TN Judicial Information Systems (TJIS) Data/Corrections	Cindy Tirey	Ctrey@tncourts.gov	2200
	TnCIS Application Support - Local Government Corp.	Local Government Help Desk		800-737-1826 / 931-381-1155
	TnCIS Application Request (TnCIS)	Amanda Hughes	ahughes@tncourts.gov	2020
		Lisa McClendon	Lisa.McClendon@tncourts.gov	2025
	TCA Request	Amanda Hughes	aotcarequest@tncourts.gov	2020
		Lisa McClendon		2025
	Email Judgment Sheets	Patti Marquardt	tnjudgments@tncourts.gov	2266
	Email Expungement Sheets	Cindy Tirey	AOC_Expungements@tncourts.gov	2200
	TnCIS (AOC Supported) Equipment / Network Issues	AOC Help Desk	https://support.tncourts.gov/request	4367
	Judge Caseload Statistics Report	Dina Enrich	Dina.Enrich@tncourts.gov	4705
	Trial Level Court Cost Questions	Amanda Hughes	ahughes@tncourts.gov	2020
		Lisa McClendon	Lisa.McClendon@tncourts.gov	2025
	Criminal Justice Portal	Charisse Bonwell	Charisse.Bonwell@tncourts.gov	4709
	E-Filing Applications	Brandon Bowers	Brandon.Bowers@tncourts.gov	2010
		Jim Hivner	Jim.Hivner@tncourts.gov	
	General Sessions Data Repository	Jennifer Williams	Jennifer.Williams@tncourts.gov	4777
	Judge Codes Assigned	Dina Enrich	Dina.Enrich@tncourts.gov	4705
	Mental Health Reporting (MHMS)	Beverly Edmonds	Beverly.Edmonds@tncourts.gov	4000
		Lisa McClendon	Lisa.McClendon@tncourts.gov	2025
		Amanda Hughes	ahughes@tncourts.gov	2020
	AOC User Update Form	AOC Help Desk - User Form	https://support.tncourts.gov/userform	

Staff Assignment Directory

ACAP Help Desk	Amy Park ext. 4190	Noel Weldon ext. 8708	2228	
ACAP Payment	Holly Kirham ext.1480	Pat Morey ext. 4095	patm@incourts.gov	
Access and Visitation Grant	Dana Schmidt ext. 2890			
Access Management Portal	Terry Tewell ext. 4888			
Access to Justice	Anne Louise Winthlin ext. 2880			
Accounts Payable Appellate Court Clerks	Kelly Meneses ext. 1325			
Accounts Payable Bonds & Commissions	Debbie Lanier ext.1440			
Accounts Payable Court Clerks/Court Reporters	Debbie Lanier ext.1440			
Accounts Payable General	Debbie Lanier ext.1440			
Accounts Payable General Sessions Judges	Kelly Meneses ext. 1325			
Accounts Payable Grants	Kelly Meneses ext. 1325			
Accounts Payable Juvenile Court Judges	Vacant			
Accounts Payable Multiple Court Judges	Vacant			
Accounts Payable Trial/Appellate Judges	Vacant			
Admin Review Form	www.in.gov 615-532-4812 or 1-800-332-2667			
Administrative Fee for Indigent Defendants (Forms, Inquiries, Reporting)	Patti Marquardt ext.2266			
Administrative Law Judge	John Crawford ext. 1110			
Administrative Office of the Courts	(615) 741-2687	Director - Michellia Long	1-800-448-7970	Fax (615) 741-6285
ADRC (Medical Dept. Pilot Program)	Dana Schmidt ext. 2890	DDR@incourts.gov		
ADRC (Technology)	Terry Tewell ext. 4888			
Advisory Task Force on Composition of Judicial Districts	Vacant			
Affirmative Action EEO	Stephanie Holliday ext. 1070	Noel Weldon ext. 8708	www.adrenewal.incourts.gov	4190
Agreed Divorce Forms	Anne Louise Winthlin ext. 2880			
Alternatives Dispute Resolution Commission and Mediation (Rule 31)	Dana Schmidt ext. 2890			
Americans with Disabilities Act (ADA) Employees	John Cote ext. 1750			
Annual Report of the Courts	Barbara Peck ext. 1400			
Annual Report of the Courts- Statistics	Chudy Tiley ext. 2200	Dina Erlich ext.4705		
Appellate Court Cost Center	(615)253-5105	Donna Gilmore (615)731-2682		
Appellate E-Filing	Tradessa Harris ext. 1450			
Application and Support	Amanda Hughes ext. 2020			
Attorney Fee Claim- Death Penalty-Capital cases	Laura Hood ext. 1820	Laura Hood ext. 1820		
Attorney Fee Claim- Dependant and Neglect Claims	Jada Herndon ext. 1415	Susan Hawkins ext. 1240		
Attorney Fee Claim- Expert Witness	Lacy Wilber ext. 1640			
Attorney Fee Claim- Guardian ad Litem- Dependant and Neglect	Jada Herndon ext. 1415			
Attorney Fee Claim- Judicial Hospitalization	Wyatt Jordan - 1335			
Attorney Fee Claim- Legal Questions	Lacy Wilber ext. 1640			
Attorney Fee Claim- Rule 13 Questions	Lacy Wilber ext. 1640			
Attorney Fee Claim-Delinquency	Jerome Sanders ext. 1990			
Attorney Fee Claim-General Sessions	Gene Vestal ext. 4141			
Attorney Fee Claim-Overclaim/Over billing	Candace McCollicison ext.1470			
Attorney Training -Child Dependency/Child Welfare	Susan Hawkins ext. 1240	Carrie Mason ext.1080		
Audio Equipment	Stacy Lynch stacy.lynch@incourts.gov ext. 1040			
Bench Bar Committee	Jarrod Walker ext. 2277	Stephanie Holliday ext. 1070		
Benefits	Eric Basham ext. 2250	(615) 741-2705		
Billings	Debbie Lanier ext.1440	james.l.carmey@in.gov		
Board Of Court Reporting	Dept. of Commerce and Insurance			
Board of Court Reporting - License-CCU's	(615)532-7534			
Board of Governor's Meeting	John Crawford ext. 1110			
Board of Judicial Conduct (Judicial Complaints)	(629) 223-7482			
Board of Judicial Conduct -Disciplinary Counsel	Judge Marshall Davidson			
Board of Judicial Conduct -Forms	Joy Schiner @ (629) 224-7482			
Board of Judicial Conduct -Information (Specific)	Shane Hutton (615) 922-0122			
Board of Law Examiners	(615) 741-3234	Director - Lisa Perlen		
Board of Professional Responsibility	(615) 741-7500	Director - Sandy Garrett		
Boards and Commissions	Deborah Sandlin ext. 2031	Jeana Hendrix ext. 1140		
Books	Deborah Sandlin ext. 2031	John Cole ext. 1750		
Books - Criminal Justice Handbook	(615) 532-5441			
Bridge-Conference Calls	(615) 253-6988	toll free # 1 888-727-6632		
Bridge-Conference Calls	(615) 253-6988	toll free # 1 866-327-9078		
Budgets	Dalton Hensley ext. 1955			
Business Court	Charlie Baldwin ext.1955	Jordan Emily ext. 1945		
CMS	Stephanie Etheridge ext. 1111			
Capital Case Attorney (Eastern Division)	Susan Jones (865) 594-5287			
Capital Case Attorney (Middle Division)	Vacant			
Capital Case Attorney (Western Division)	Jeana Hendrix ext. 1140			
Capital Case Attorney Renewals				

tals.org/tla (This site has income qualifications)

<p>Oath of office- editable forms</p> <p>Online Dispute Resolution</p> <p>Orders of Protection Forms</p> <p>Out of State Education</p> <p>Parent Education Mediation Fund</p> <p>Parenting Plan</p> <p>Payroll (Supreme Court / AOC)</p> <p>Personnel (Judicial employees/Supreme Court/AOC)</p> <p>Policies/Policy Coordination</p> <p>Presiding Judges List</p> <p>Press Calls (General and Public Relations - Radio, TV, Newspaper)</p> <p>Pro Bono Coordinator</p> <p>Professional Privilege Tax (Dept of Revenue)</p> <p>Public Report of Compensation- updates</p> <p>Purchasing</p> <p>Purchasing (Computers)</p> <p>Quest User Questions</p> <p>ROA's (Records Management)</p> <p>Recording Equipment</p> <p>Renewal of Capital Case Attorneys</p> <p>Retirement</p> <p>Rule 12 (Tech)</p> <p>Rule 12 Reports</p> <p>Safe Baby Courts</p> <p>Salary Increase Questions</p> <p>SCALES Project (Supreme Court Advancing Legal Education for Students)</p> <p>Scheduling Computer Classes</p> <p>Security(Courtroom)</p> <p>Senior Judges</p> <p>Service Awards</p> <p>Shred It (AOC)</p> <p>Staff Attorney /Law Clerk Positions</p> <p>Statistics</p> <p>Statistics Analyst</p> <p>Supplies</p> <p>TALS (Tennessee Alliance for Legal Services)</p> <p>Technology Support</p> <p>Tennessee Lawyers Assistance Program</p> <p>Three Judge Panel</p> <p>Title VI & IX</p> <p>TJIS (TN Judicial Information System)</p> <p>TN Council of Juvenile and Family Court Judges</p> <p>TN Judicial Conference Foundation</p> <p>TNJCIS</p> <p>TNJCIS (Hardware and support)</p> <p>TNJCIS (Manager)</p> <p>Trial Court Vacancy Commission</p> <p>Vendor Payments</p> <p>Video Conferencing</p> <p>Vital Records</p> <p>VORP (Victim Offender Reconciliation Program)</p> <p>Webmaster</p> <p>Weighted Case-load</p> <p>Westlaw (Internet Version)</p> <p>Westlaw Books</p> <p>Workers Compensation Panels</p> <p>Workplace Harassment Policy/Claims</p> <p>Youth Court Services</p> <p>Zoom (Conferences for Judges)</p> <p>Zoom Meetings</p> <p>Zoom Request</p>	<p>www.tncourts.gov/node/2215</p> <p>ODR@TNCourts.gov</p> <p>Help4tn.org</p> <p>Ariel Borne ext. 1900</p> <p>Dana Schmidt ext. 2890</p> <p>Anne Louise Wirthin ext. 2880</p> <p>Eric Basham ext. 2250</p> <p>Eric Basham ext. 2250</p> <p>Stephanie Holliday ext. 1070</p> <p>Ariel Borne ext. 1900</p> <p>Barbara Peck ext. 1400</p> <p>Savannah Quintero ext. 2495</p> <p>1-800-342-1003 Or (615) 253-0600</p> <p>Stacey Jackson ext. 1000</p> <p>Beth Harris ext. 1450</p> <p>David Thomas ext. 2040</p> <p>Lauren Tahash ext. 2032</p> <p>Vacant</p> <p>Jarrod Walker ext. 2277</p> <p>Vacant</p> <p>Stephanie Holliday ext. 1070</p> <p>Terry Towell ext. 4888</p> <p>Jeanne Hendrix ext. 1140</p> <p>Stephanie Etheridge ext. 1111</p> <p>Stephanie Holliday ext. 1070</p> <p>John Crawford ext. 1110</p> <p>Wendy Wesley ext. 1370</p> <p>Barbara Peck ext. 1400</p> <p>John Coke ext. 1750</p> <p>Stacey Jackson ext. 1000</p> <p>Wyatt Jordan ext. 1335</p> <p>Stephanie Holliday ext. 1070</p> <p>Cindy Trey ext. 2200</p> <p>Dina Enrich ext. 4705</p> <p>Beth Harris ext. 1450</p> <p>Anne Louise Wirthin ext. 2880</p> <p>(615)-532-9503</p> <p>(615)/741-3238</p> <p>Jordan Emily ext. 1945</p> <p>Stephanie Holliday ext. 1070</p> <p>Cindy Trey ext. 2200</p> <p>Stephanie Etheridge ext. 1111</p> <p>Suzanne Keith</p> <p>Lisa McClendon ext. 2025</p> <p>Taylor York ext. 2150</p> <p>Amanda Hughes ext. 2020</p> <p>Rachel Harmon ext. 1150</p> <p>Debbie Lanier ext.1440</p> <p>Taylor York ext. 2150</p> <p>(615) 685-4700</p> <p>Dana Schmidt ext. 2890</p> <p>Vacant</p> <p>Wendy Wesley ext. 1370</p> <p>John Coke ext. 1750</p> <p>Stephanie Holliday ext. 1070</p> <p>Lauren Tahash ext. 2032</p> <p>John Crawford ext. 1110</p> <p>Nick Morgan ext. 2015</p> <p>www.projectrequest.tncourts.gov</p>	<p>http://www.tn.freelancehanswells.org</p> <p>John Crawford ext. 1110</p> <p>Noel Weldon ext. 8708</p> <p>Stephanie Holliday ext. 1070</p> <p>Stephanie Holliday ext. 1070</p> <p>Rachel Harmon ext. 1150</p> <p>Anne Louise Wirthin ext. 2880</p> <p>Attorney or Judge- Stephanie Holliday ext.1070</p> <p>Questions - Rachel Harmon ext. 1150</p> <p>Dalton Hensley ext.1460</p> <p>Lauren Tahash@tncourts.gov</p> <p>John Coke ext. 1750</p> <p>Eric Basham ext. 2250</p> <p>Carrie Taylor ext. 1920</p> <p>Eric Basham ext. 2250</p> <p>Director - Buddy Stockwell III</p> <p>Danellie Lane ext. 1935</p> <p>Ryan Graham ext. 1180</p> <p>(615)329-3000</p> <p>David Thomas ext. 2040</p> <p>David Thomas ext. 2040</p> <p>Noel Weldon ext. 8708</p> <p>Barbara Peck ext. 1400</p> <p>Barbara Peck ext. 1400</p>	<p>grants@tncourts.gov</p> <p>slKeith@tnja.org</p> <p>grants@tncourts.gov</p>
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TENNESSEE CLERKS OF COURT

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Rev 2/17/23

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.

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.tncourts.gov 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.

COUNTY TECHNICAL ASSISTANCE SERVICE (CTAS) TRAINING RESOURCES



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Please visit our website to download all of our materials from this orientation program

WWW.CTAS.TENNESSEE.EDU/

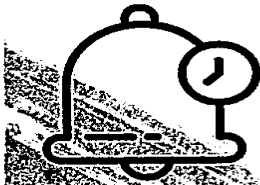


County Technical
Assistance Service

INSTITUTE for PUBLIC SERVICE

After September 1st

Please verify your contact information on our website.



1. Please go to www.ctas.tennessee.edu
2. Click on **Counties**
3. Go to **your county**, then click **your name**
4. Click **Request Update**
5. Update info and click **Submit**



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

County Elected Officials *Certificate*

About CEOC

This program expands county official training beyond the County Officials Orientation Program (COOP) offered every four years when there is a county general election.

As a fully-online training program, CEOC offers coursework designed to prepare elected county officials in specialized topic areas related to county government in Tennessee.

This program is highly recommended for only elected county officials in Tennessee to continue the training they received at COOP.

ENROLLMENT

This program requires a one-time enrollment fee of \$150. Enrollment information will be available soon.

PROGRAM CLASSES • 23.5 CREDITS

LEGAL

- Overview of Personnel Issues
- Overview of Public Meetings & Managing Public Records

BUDGETING

- Preparing for the Budget Season
- Maintenance of Effort
- Budget Committee: Working with Elected Officials and Department Heads
- Approving, Submitting, and Managing the Budget
- Letters of Agreement and Mid-year Raises

FINANCE

- Basic Understanding of Governmental Fund Financial Statements
- County Government Environment
- Internal Controls & Audits
- Purchasing and Risk Management

INFORMATION TECHNOLOGY

- Cybersecurity for Small and Medium Businesses: Essential Training
- Cybersecurity at Work
- Cybersecurity Awareness: Building Your Cybersecurity Vocabulary

LEADERSHIP

- Decision-Making Strategies
- Leading Yourself
- Leadership Foundations

CUSTOMER SERVICE

- Unconscious Bias
- Working with Upset Customers

COMMUNICATIONS

- Effective Listening
- Communication Foundations

Contact

ctas.support@tennessee.edu

More Information

www.ctas.tennessee.edu

Get a k@te Account

Before you can begin your training journey with CTAS, you must get a k@te account. Follow these easy steps to get started:

www.ctas.tennessee.edu

Step 1

Click **Training** on our website



Step 2

Click **Request k@te Account**



Step 3

Fill out the **k@te Account Request form**

Please provide ALL information, especially your JOB TITLE in the Title field.

Step 4

Receive account approved email from **CTAS Support**

This email contains important information about your new k@te account – please read it in its entirety!



County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

Enroll in COCTP

Interested in becoming a Certified Public Administrator? Enroll in our County Officials Certificate Training Program (COCTP) today. Follow these easy steps to get started:

www.ctas.tennessee.edu

Step 1

Click **Training** on our website



Step 2

Click **Enroll in COCTP**



Step 3

Fill out the **COCTP Enrollment form**

Please provide ALL information and indicate how your \$300 enrollment fee will be paid (check, purchase order, or credit card).

Step 4

Receive confirmation email from **CTAS Support**

This email contains important information about your enrollment – please read it in its entirety!



County Technical Assistance Service
INSTITUTE for PUBLIC SERVICE

CTAS e-Li: Electronic Library

www.ctas.tennessee.edu/eli

- ★ Answers to county government questions
- ★ Access to county government resources
- ★ Learn about county government in Tennessee
- ★ Office specific manuals available to print

e-Li, our electronic library, contains a wealth of information related to county government in Tennessee. Topics range from accounting and budgeting to public records and everything in between.

e-Li is organized by topic and can be searched using the search box at the top of the website. It's a great way to find answers to questions about Tennessee county government.

e-Li Quick Reference

Enter the reference number in the search box to quickly access these pages.

Title

County Offices: Sheriff

Duties: Sheriff

Funding for Sheriff's Office

Revenue: Accounting for Fees

Public Safety: Jail Administration

Public Safety: Workhouses

Records Management: Sheriff's Records Retention Schedule

Reference Number

CTAS-35

CTAS-40

CTAS-1218

CTAS-1643

CTAS-184

CTAS-1432

CTAS-2060

**Need help with e-Li? Contact us at
ctas.support@tennessee.edu**

OTHER FORMS

- Affidavit of Indigency
- Bail Bond Forms
- Expungement Forms
- Order for Restricted Driver License
- Restoration of Voting Rights

IN THE _____ COURT FOR _____ COUNTY
STATE OF TENNESSEE

vs.

Case/Docket No. _____

or

Warrant No. _____

Defendant _____

DOB: _____

UNIFORM AFFIDAVIT OF INDIGENCY
FOR PURPOSES OF ELECTRONIC MONITORING INDIGENCY FUND
(T.C.A. § 55-10-419)

Comes the defendant and, subject to the penalty of perjury, makes oath to the following facts (please list, circle, complete, etc.):

1. Full name: _____
List any other names you have used: _____
2. Address: _____
3. Telephone Nos.: (Home/Cell) _____ (Work) _____
4. Are you working? () Yes () No If yes, where? _____
5. How much money do you make? \$ _____ per hour/day/week/month/year (circle one)
6. Do you have any income other than the income listed above? () Yes () No
If yes, list the total amount \$ _____
Remember, possible sources include, but are not limited to the following: interest, gifts, AFDC, SSI, social security, retirement, disability, pension, unemployment, alimony, and workers' compensation.
7. Your total annual income after taxes is \$ _____
8. Number of persons in your family/household: _____
9. Acknowledging that I am still under oath, I certify that I have listed above all income I receive.
10. By signing this form, I agree to file a copy of my most recent income tax return if requested by the court.
11. I understand that, pursuant to the perjury offense set out in T.C.A. § 39-16-702, it is a Class A misdemeanor for which I can be sentenced to jail for up to 11 months, 29 days or be fined up to \$2,500, or both, if I intentionally misrepresent, falsify or withhold any information required in this affidavit. I also understand that I may be required by the Court to produce other information in support of my request to be declared indigent for purposes of using the electronic monitoring indigency fund.

This _____ day of _____, _____
Signature of Defendant

Sworn to and Subscribed before me this _____ day of _____, _____

Signature of Judge/Clerk

BAIL BOND FORMS

Example 1

***NOTICE TO CORRECTION OFFICER'S:** This form must be completed in all bond cases from here on out. A copy must be placed in the personal file and a copy given to the arrestee.

T.C.A. 40-11-126 (2) In addition to the criminal sanctions elsewhere provided by law, the following is deemed unprofessional conduct and no bondsman or surety agent shall pay a fee or rebate or give or promise anything of value to any clerk of court, correctional officer, police officer, peace officer, committing magistrate or any other person who has the power to arrest or hold in custody or any public official or public employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond or the forfeiture thereof.

T.C.A. 40-11-126 (8) Accept anything of value from a principal except the promissory note; provided, that the bondsman shall be permitted to accept collateral security or other indemnity from the principal which be return upon final termination of liability on the bond. Such collateral security or other indemnity from required by the bondsman must be reasonable in relation to the amount of the bond. When a bail bondsman accepts collateral, such bondsman give a written receipt for same, and this receipt shall give a full description of the collateral received and terms of redemptions.

BOND NOTICE:

You have been arrested and charged with a criminal offense. The court has set your bond at

\$ _____ dollars. Bond is intended to assure your appearance in court.

YOUR COURT DATE IS _____, 20____, at _____ am.

If you fail to appear, a conditional forfeiture of your bond will be taken and a capias will be issued for your arrest. You may be held without bond and charged with a new offense of failure to appear.

You may make a cash deposit in the amount of the bond. IF YOU POST A CASH BOND TO BOND SOMEONE OUT- YOU UNDERSTAND THAT MONEY WILL BE USED FOR FINES AND COST. Should there be any balance it shall be returned to the defendant. This money will remain yours and will be on deposit with the court. If the case against you is fully dismissed, your cash deposit will be fully refunded. If your case is dismissed on costs or you receive fines, costs, restitution and/or jail fees upon a finding or plea of guilty, your cash deposit will be applied towards these and any amount remaining will be refunded to you. You may make an appearance bond. A bondsman is only allowed to charge you up to 10% of the bond amount plus a one time initiation fee of \$25.00 and a \$12.00 tax. You may also be requested to put up additional collateral security to insure your appearance. You will not receive any of the fees back as a refund. You will not receive a credit on fines, costs, restitution and/or jail fees for the money you pay to a bondsman. They are allowed to charge these fees to ensure your appearance in court. If you fail to appear, a conditional forfeiture will be taken on the bond and a capias will be issued for your arrest. The bondsman will be given 180 days to take you

into custody or otherwise a forfeiture of the entire bond amount will be taken. You may also be allowed to make a surety or property bond with the courts permission. If you choose to make a cash bond on behalf of someone, you understand the cash bond will be applied to fines, costs, restitution (if any) and jail fee and balance (if any) will then be returned to the defendant.

I acknowledge, by my signature below, that this been explained to me and receipt of copy.

1. _____ 2. _____

Signature of person being bonded. Signature of person/bondsman posting cash bond.

3 _____, 20____ at _____ am/pm

Signature of Correctional Officer or witness

Example 2

IN THE GENERAL SESSIONS COURT OF BEDFORD COUNTY, TENNESSEE

STATE OF TENNESSEE

V. CASE NO. _____

ORDER GRANTING CONDITIONAL FORFEITURE

Bond in the above-styled action having been executed and filed therein, and the Defendant, _____, having failed to appear for Court on the date set, it is therefore adjudged and declared to be hereby forfeited, and a conditional judgment is rendered, pursuant to *Tennessee Code Annotated 40-11-139*, in favor of the State of Tennessee and against the Defendant and the Surety, _____ Bonding Company, on the bond for the sum of \$_____, and the cost of action.

The Clerk of the Court will issue a Scire Facias requiring the Defendant and the Surety on the bail bond to appear in this Court at _____ on _____, 20____, to show cause for not making that judgment final.

So ORDERED this _____ day of _____, 20____.

Judge, GENERAL SESSIONS JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this date placed a true and exact copy of the foregoing Order in the United States Mail, postage prepaid to _____ Bonding Company,

This the _____ day of _____, 20____.

Judge, GENERAL SESSIONS JUDGE

Example 3

IN THE GENERAL SESSIONS COURT OF _____ COUNTY, TENNESSEE

STATE OF TENNESSEE

V. _____ CASE NO. _____

ORDER OF FINAL FORFEITURE

This cause came on to be heard on the ____ day of _____, 20____, before the Honorable (Judge name) , General Sessions Judge, holding General Sessions Court, for Bedford County Tennessee, upon the Conditional Order of Forfeiture previously entered, upon the motion of the State, and upon the entire record in this cause, and

The Court found that a Conditional Order of Forfeiture was entered on the Defendant's bond and served more than 180 days prior to _____, 20____, and that the bondsman still has not been able to produce the Defendant, and therefore

IT IS ORDERED that a final forfeiture on the Defendant's bond in the amount of \$_____ is taken against _____ Bonding Company and that the said bondsman is given 30 days in which to pay this amount. Bonding privileges are suspended pending payment of the bond.

IT IS FURTHER ORDERED that if the final forfeiture is not paid, the bonding company is to appear before the Honorable (Judge name) at 9AM on _____, 20____.

Judge, GENERAL SESSIONS JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this date placed a true and exact copy of the foregoing Order in the United States Mail, postage prepaid to _____ Bonding Company,

This the ____ day of _____, 20____

Judge, GENERAL SESSIONS JUDGE

Example 4

Bedford Co General Sessions Court 108 North Creek Dr Suite 6 Shelbyville, TN 37160 (931)684-3223	SCIRE FACIAS Page 1 of 1	Case Number 2GS1-2014-TR- 13126
State Of Tennessee vs John Paul Dochety		
Address _____		

Garnishee / Surety: BONDING COMPANY

Address: _____

Hearing: _____ Reset for: _____

To Any Lawful Officer of Said County:

You are hereby commanded to notify the Garnishee/Surety that a conditional judgment was rendered against said Garnishee/Surety in the Bedford Co General Sessions Court for this County for the sum of _____ and costs, due to State Of Tennessee within the time prescribed by law, and the same will be made final unless the Garnishee/Surety appears in this Court on _____ and shows cause to the contrary.

Issued: 3/29/2022

Clerk / Deputy Clerk – Bedford Co General Sessions Court

OFFICER'S RETURN: I certify that I have served this Summons by reading same to all Garnishee/Surety named above or by _____

Date: _____

By: _____
Please Print: Officer, Title

Agency Address

Signature

ADA: If you need assistance or accommodations, please call Curt Cobb, ADA Coordinator, at (931)684-1672.

Legal Authority: TCA §29-32-108 (form)

Example 5

Bedford Co General Sessions Court 108 North Creek Dr Suite 6 Shelbyville, TN 37160 (931)684-3223	CAPIAS / BENCH WARRANT page 1 of 1	Case Number 2GS1-2014-TR-13126												
State of Tennessee vs. Defendant (s) _____ Address _____ Tullahoma, TN 37388 Phone # _____ Defendant Information:														
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Date of Birth: _____</td> <td style="width: 33%;">Sex: M</td> <td style="width: 33%;">Race: W</td> </tr> <tr> <td>Ht.: _____</td> <td>Wt.: _____</td> <td>SSN: _____</td> </tr> <tr> <td>Hair: _____</td> <td>Eyes: _____</td> <td>DL#: _____</td> </tr> <tr> <td colspan="3">Place of Employment: _____</td> </tr> </table>			Date of Birth: _____	Sex: M	Race: W	Ht.: _____	Wt.: _____	SSN: _____	Hair: _____	Eyes: _____	DL#: _____	Place of Employment: _____		
Date of Birth: _____	Sex: M	Race: W												
Ht.: _____	Wt.: _____	SSN: _____												
Hair: _____	Eyes: _____	DL#: _____												
Place of Employment: _____														

Bond Amount: _____
 Initial Appearance Date: March 13, 2014

To Any Lawful Officer of Said County:

You are commanded to take the body of John Paul Dochety if to be found in your County, and keep him/her safely, so that you have him/her before the Judge of Bedford Co General Sessions Court for the County of Bedford, at the Courthouse in the town of Shelbyville, instanter, and then and there to answer to the charge(s) of:
55-8-152 SPEEDING

Issued: 3/29/2022

 Judge/ Clerk / Deputy Clerk / Judicial Commissioner

OFFICER'S RETURN: Came hand this date and executed by:

☐ I Hereby Certify and Return that on the Below Date I Executed this Warrant by the Arrest of:

☐ Not to be found: _____

Date: _____

By: _____
 Officer, Title

ADA: If you need assistance or accommodations, please call Curt Cobb, ADA Coordinator, at (931)684-1672.

Rev 5/03

EXPUNGEMENT FORMS

(FOR TBI USE ONLY) State Identification Number: _____

(FOR TBI USE ONLY) FBI Identification Number: _____

ORDER FOR THE EXPUNGEMENT OF CRIMINAL OFFENDER RECORD (PLEASE PRINT OR TYPE)

State of Tennessee vs _____ Circuit Docket Number _____

Date Original Case was filed in Clerk's Office _____ General Sessions Docket Number _____

In the _____ Court of _____ County, Tennessee at _____

On the Motion or Petition of _____

Defendant/Arrest Information:

Defendant (name used at time of arrest) _____	Race _____	Sex _____	Date of Birth _____
Arresting Agency _____	OCA# _____	Date of Arrest _____	
Charge 1 (As shown on arrest fingerprint card) _____	SSN# _____		
Charge 2 (As shown on arrest fingerprint card) _____			
Charge 3 (As shown on arrest fingerprint card) _____			

Disposition Information:

Final Charge 1
Final Charge 2
Final Charge 3
Final Disposition
Diversion Date (if applicable)

The defendant named above is entitled to have all PUBLIC RECORDS relating to the offenses listed above expunged according to the Tennessee Code Annotated provision marked below:

Provision relating to Adults: <input type="checkbox"/> Charge has been dismissed (T.C.A. § 40-32-101) <input type="checkbox"/> No true bill returned by Grand Jury (T.C.A. § 40-32-101) <input type="checkbox"/> Verdict of not guilty returned by jury (T.C.A. § 40-32-101) <input type="checkbox"/> Conviction which has by appeal been reversed (T.C.A. § 40-32-101) <input type="checkbox"/> Nolle Prosequi entered in case (T.C.A. § 40-32-101) <input type="checkbox"/> Successful completion of all probation provisions and proceedings against defendant have been discharged by the court (T.C.A. § 40-35-313) <input type="checkbox"/> Suspension of prosecution pursuant to T.C.A. § 40-15-105	Provisions relating to Juveniles: <input type="checkbox"/> Petition alleging delinquency not filed (T.C.A. § 37-1-155) <input type="checkbox"/> Proceedings dismissed after petition is filed or the case transferred to Juvenile Court as provided in T.C.A. § 37-1-109 (T.C.A. § 37-1-155) <input type="checkbox"/> Adjudicated not to be a delinquent child (T.C.A. § 37-1-155) <input type="checkbox"/> Child has reached eighteen (18) years of age and there is no record that he committed a criminal offense after reaching sixteen (16) years of age, unless such fingerprints were obtained on alleged charge which if committed by an adult would be a felony (T.C.A. § 37-1-155) <input type="checkbox"/> Passage of six (6) months from date of liquor law violations defined by T.C.A. § 57-3-412(a)(3)(c) or T.C.A. § 57-5-301(c)(3)
--	---

It is ordered that all PUBLIC RECORDS relating to such offense above referenced be expunged and immediately destroyed upon payment of all costs to clerk and that no evidence of such records pertaining to such offense be retained by any municipal, county, or state agency, except non-public confidential information retained in accordance with T.C.A. § 10-7-504 and T.C.A. § 38-6-118.

APPROVED FOR ENTRY

Defendant/Attorney for Defendant _____ District Attorney General _____	Entered this _____ day of _____, _____ _____ Judge
---	---

Form EX-1 (Rev. 2003)

IN THE CIRCUIT COURT OF CARROLL COUNTY, TENNESSEE
DIVISION

STATE OF TENNESSEE

CASE # _____

vs.

CHARGE(S): _____

PETITION TO EXPUNGE RECORDS OF CONVICTION
PURSUANT TO T.C.A. § 40-32-101(i)

Petitioner respectfully petitions this Honorable Court to order that all public records of the conviction for _____ under Case # _____ be expunged pursuant to T.C.A. § 40-32-101(g) and in support would state to the Court as follows:

1. The statute authorizes the subject conviction to be expunged.
2. Petitioner has no other conviction in this or any other jurisdiction other than the one to be expunged.
3. At least five (5) years have elapsed since the completion of the sentence imposed for the offense.
4. All fines, restitution, court costs, and other Court-ordered assessments have been paid.
5. All terms of imprisonment, probation, and parole have been completed.
6. All conditions of supervised or unsupervised release have been met.
7. If so required by the conditions of the sentence imposed, Petitioner has remained free from dependency on or abuse of alcohol or a controlled substance or other prohibited substance for a period of not less than one (1) year.
8. Petitioner understands and acknowledges that the District Attorney is not Petitioner's attorney and is not providing legal advice. Petitioner

understands that the District Attorney is performing an administrative function pursuant to TCA § 40-32-101(g) by assisting in the completion of the petition to expunge and the order of Expungement, and further in some instances the District Attorney General may stand in opposition to the granting of the petition. Petitioner understands that the District Attorney has advised Petitioner that he/she may seek independent legal counsel to assist him/her with the Expungement process. Petitioner further understand that the order granting Expungement does not reinstate his/her voting rights or other citizenship rights and that further action may be required to have any of those rights restored. Petitioner understands that the filing of the petition for Expungement does not guarantee that the petition will be granted by the Court.

9. Petitioner further understands that statements made in the petition for Expungement are made under penalty of perjury in connection with an official proceeding.

WHEREFORE, Petitioner prays that this Court order that all public records of this conviction be expunged pursuant to T.C.A. § 40-32-101(g).

Respectfully submitted,

PETITIONER'S SIGNATURE

PETITIONER'S MAILING ADDRESS:

IN THE CRIMINAL COURT FOR CARROLL COUNTY

REQUEST FOR REMOVAL OF CRIMINAL OFFENDER RECORD
PURSUANT TO T.C.A. §40-32-101(j)

State of Tennessee v. _____ Circuit Docket No. _____
General Sessions Docket No. _____

Defendant/Arrest Information:

Defendant (name used at time of arrest) _____ Race _____ Sex _____ Date of Birth _____

Arresting Agency _____ Date of Arrest _____

Charge 1 (As shown on arrest fingerprint card) _____ SSN# _____

Charge 2 (As shown on arrest fingerprint card) _____

Charge 3 (As shown on arrest fingerprint card) _____

Disposition Information:

Final Charge 1 _____

Final Charge 2 _____

Final Charge 3 _____

Final Disposition _____

***The Defendant understands that this request will only remove the requested charges from the Tennessee Bureau of Investigation database, the National Crime Information Database, and/or any public electronic database maintained by the court clerk, pursuant to T.C.A. §40-32-101(j), if eligible. This request will not expunge all records from any court file or other county database. Court clerks shall not be liable for any errors or omissions relating to the removal and destruction of records under this petition.**

Defendant/Attorney for Defendant _____ Date: _____

ORDER FOR RESTRICTED DRIVER'S LICENSE



STATE OF TENNESSEE DEPARTMENT OF SAFETY & HOMELAND SECURITY ORDER FOR RESTRICTED DRIVER LICENSE (MUST BE COMPLETED BY THE COURT OF JURISDICTION)

IF YOU HELD A VALID/NON-EXPIRED DRIVER LICENSE ON THE DATE THIS ORDER WAS ISSUED, THE ORDER CAN BE USED AS A 10-DAY TEMPORARY RESTRICTED LICENSE. YOU MUST APPLY AT A DRIVER SERVICE CENTER FOR A RESTRICTED LICENSE - INSTRUCTIONS ON BACK

[STATE OF TENNESSEE (full name)]		[DRIVER LICENSE NO.]	
[DATE OF ARREST]		[DATE OF BIRTH]	
[CHARGE]		[COUNTY]	
[DISPOSITION]	[OFFENSE#]	[PENDING] DUI [CHARGE]	[DOCKET NO.]

ORDER

Upon application of the Defendant for a restricted driver license, it appears to the Court that the Defendant has been:
☐ Convicted of, or pending action for, DUI (TCA 55-10-401) and does not have a prior conviction of aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, or vehicular assault, or a similar offense in another state, and the offense was not the proximate cause of death or serious bodily injury to another person (TCA 55-10-409(a))

- ☐ Suspended under the implied consent law (TCA 55-10-407 & 55-10-408)
☐ Revoked for a conviction of drag racing (TCA 55-10-502)
☐ Suspended for an 18-20 alcohol violation by a minor (TCA 57-5-301) or ☐ a violation of the drug free youth act (TCA 55-10-701)
☐ Suspended for a conviction of driving away from fuel pump without paying for fuel (TCA 39-14-151)

If further appears to the Court that the Defendant needs a restricted driver license for the purposes set forth in TCA 55-10-409 and TCA 55-50-502(c)(3). This restricted license is temporary and subject to revocation, if the Department determines you are not eligible pursuant to the above statutory laws. This is only valid until the Department has had an opportunity to make a final determination of eligibility for a restricted license.

IGNITION INTERLOCK DEVICE (IID) REQUIRED?

FAILURE TO MARK APPROPRIATE BOXES WILL RESULT IN DENIAL BY THE DEPARTMENT UNTIL A CORRECTED COURT ORDER IS RECEIVED

NO, IGNITION INTERLOCK NOT REQUIRED Court Findings (must be recorded): <input type="checkbox"/> IMPLIED CONSENT WITH NO PRIORS TCA 55-10-409(b)(2)(B)(iv) <input type="checkbox"/> DUI BAC IS NOT .08% OR ABOVE AND NO DRUGS [BAC: .04%] <input type="checkbox"/> DUI DID NOT INVOLVE ALCOHOL AND (all below must be true to waive re: <input type="checkbox"/> NO ACCIDENT DUE TO DUI <input type="checkbox"/> NO PERSON UNDER 18 IN VEHICLE <input type="checkbox"/> NO PRIOR DUI WITHIN 10 YEARS GEOGRAPHIC RESTRICTIONS BELOW		YES, IGNITION INTERLOCK REQUIRED (mark all that apply) <input type="checkbox"/> YES, DUI BAC .08% OR HIGHER TCA 55-10-409(b)(2)(B)(i) <input type="checkbox"/> YES, DUI WITH ANY BAC AND DRUGS TCA 55-10-409(b)(2)(B)(i) <input type="checkbox"/> YES, PERSON UNDER 18 IN VEHICLE TCA 55-10-409(b)(2)(B)(i) <input type="checkbox"/> YES, ACCIDENT DUE TO DUI TCA 55-10-409(b)(2)(B)(ii) <input type="checkbox"/> YES, VIOLATION OF IMPLIED CONSENT AND PRIOR CONVICTION (PAST FIVE YEARS) FOR TCA 55-10-409(b)(2)(B)(iv) <input type="checkbox"/> YES, PRIOR DUI WITHIN 10 YEARS <input type="checkbox"/> TCA 55-10-409(b)(1)(B)(i) <input type="checkbox"/> TCA 55-10-409(d)(2) <input type="checkbox"/> YES, DRIVER REQUESTED TCA 55-10-409(b)(2)(C) <input type="checkbox"/> YES, COURT DISCRETION <input type="checkbox"/> TCA 55-10-409(b)(2)(D) or <input type="checkbox"/> TCA 55-50-502(c) <input type="checkbox"/> TCA 55-10-409(b)(1)(A)(ii) <input type="checkbox"/> TCA 55-50-502(c) If IID required, probation is also required per TCA 55-10-417(a)(3) (Probation Officer: [Name] Phone: [Number]) <input type="checkbox"/> GEOGRAPHIC RESTRICTIONS ARE ALSO REQUIRED AND ARE LISTED BELOW
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Interlock required after reinstatement: ☐ Yes ☐ No : ☐ TCA 55-10-417(a)(1) Time (months) or ☐ TCA 55-10-417(k) (6 months)

(Note to IID Provider: An IID Provider shall not install an IID until the above information is supplied by the Court)

GEOGRAPHIC RESTRICTIONS

Information below must also be completed on all other convictions requiring geographic restrictions. Furnish complete name and address (street #, street name, city & state) of each location being requested. If you have geographic restrictions, these are the ONLY locations and/or dates/times you will be authorized to operate a motor vehicle. Your correct home address should appear on your restricted driver license.

<input type="checkbox"/> Employer	Address:
	Type of Employment:
<input type="checkbox"/> College/University	Name:
	Address:
<input type="checkbox"/> Court Ordered Alcohol Safety Program	Name:
	Address:
<input type="checkbox"/> Meeting/Function with Probation Officer	Name:
	Address:
<input type="checkbox"/> Regular Place of Worship	Name:
	Address:
<input type="checkbox"/> Scheduled Interlock Monitoring Appointment	Name:
	Address:
<input type="checkbox"/> Outpatient Alcohol/Drug Treatment Program	Name:
	Address:
<input type="checkbox"/> Home (If not address on Driver License)	Address:

Permitted Days: ☐ Sun ☐ Mon ☐ Tues ☐ Wed ☐ Thurs ☐ Fri ☐ Sat

Permitted Driving Hours: (State from time you leave home until return): _____ AM to _____ PM

It is therefore ORDERED that the Defendant be issued a restricted driver license for the purposes and with the conditions set forth above, subject to state laws and the rules and regulations of the Department of Safety and Homeland Security of the State of Tennessee.

[DATE]	[JUDGE'S SIGNATURE]	[COURT NAME & SEAL/STAMP]
SF 0580 (Rev 10/18)		Must have court stamp/seal to be accepted. We can accept photocopies
Must use most recent version		MDA-1348

IF YOU DRIVE OUTSIDE OF TENNESSEE, IT IS SUGGESTED THAT YOU OBTAIN WRITTEN PERMISSION FROM THE APPROPRIATE AUTHORITY IN THAT JURISDICTION.

Your privilege to drive cannot be under revocation/suspension/cancellation for any other reason in Tennessee or any other state. Applicant will be required to meet all requirements to clear any such revocation/suspension/cancellation before issuance of the restricted driver license.

I. INSTRUCTIONS FOR ISSUANCE OF A RESTRICTED LICENSE FOR DUI, IMPLIED CONSENT, OR DRAG RACING

The state statute provides a restricted driver license can be issued under limited circumstances. Unless the Court has authorized a license with an ignition interlock device and NO geographic restrictions, your privilege to drive, other than the approved restrictions, is REVOKED or SUSPENDED and driving PROHIBITED per state statute. TO BE ELIGIBLE FOR THIS RESTRICTED DRIVER LICENSE:

- If applying for a restricted license, after a Driving Under the Influence conviction, you must not have been convicted of a prior Aggravated Vehicular Homicide as the proximate result of Intoxication, Vehicular Homicide, Aggravated Vehicular Assault, or Vehicular Assault.
- If applying for a restricted license, after a Driving Under the Influence conviction, you cannot have been involved in an accident in which a person was killed, or suffered serious bodily injury, as the approximate result of the Driving Under the Influence violation.
- If restricted to vehicle(s) with an Ignition Interlock device, such device must be installed on the vehicle before applying for the restricted driver license and must be used while operating the vehicle in order for the restricted license to be valid. For a list of Ignition Interlock service center locations or information regarding the "Compliance Based Removal Law (TCA 55-10-425) effective July 1st, 2018, you can visit the Department of Safety and Homeland Security's website at <https://www.tn.gov/content/tn/safety/driver-services/locations/ii/install.html>
- If restricted to vehicle(s) with an Ignition Interlock device, the restriction shall be a condition of probation or supervision for the entire period of the restriction per TCA 55-10-417(a)(3). Probation contact information must be completed on the front of the order.

Go to a Driver Services Center within ten (10) days of the date of this Court Order and present two (2) copies of this Order along with one (1) of the following: SR-22 Insurance form (policy or any other document is not acceptable), a Financial Responsibility Bond, or \$60,000 in cash or Corporate Surety Bond. If the Court or statute requires the driver be restricted to vehicles with a functioning Ignition Interlock device, the device must be installed on the vehicle and verified by the Department of Safety and Homeland Security. Upon paying the required license fees, a 90-day interim license will be issued; the license fee is \$65.00 and the application fee is \$2.00. One (1) copy of the Court Order will be returned to you and must be kept with the temporary driving permit and with the restricted license you receive by mail. Barring any complication, an original restricted license will be mailed to you within the 90 days.

**II. INSTRUCTIONS FOR ISSUANCE OF A RESTRICTED LICENSE FOR A JUVENILE OFFENDER
(Drug/Alcohol Violations Under 21 Years of Age)**

The Drug Free Youth Act or 18-20 Alcohol Violation statute provides a restricted driver license can be issued upon presenting clear and convincing evidence of an economic, educational, or health related hardship will result without such license. Such license SHALL NOT be granted for travel to and from social events or extracurricular school activities. Driving is permitted ONLY to and from place of employment and educational institution if reasonable parental/public transportation is unavailable, or free transportation is not provided by the educational institution. Privilege to drive, other than these restrictions, is SUSPENDED and driving PROHIBITED per state statute. TO BE ELIGIBLE FOR THIS RESTRICTED DRIVER LICENSE:

- If violation is a 2nd or subsequent conviction, must serve a one (1) year suspension or until offender reaches the age of 17, whichever is later.

Go to a Driver Services Center within ten (10) days of the date of this Court Order and present two (2) copies of the Order along with proper identification. If under the age of 18, you will need a new Teenage Affidavit. A new Compulsory School Attendance form will be required ONLY if no previous permit/license has ever been issued or a truancy violation has occurred. Upon paying the required license fee (application fee of \$20.00), a 90-day interim license will be issued. Barring any complication, an original restricted license will be mailed to you within the 90 days.

III. INSTRUCTIONS FOR ISSUANCE OF A RESTRICTED LICENSE FOR DRIVING AWAY FROM PUMPS WITHOUT PAYING FOR FUEL

TCA 39-14-151 provides a person suspended for driving away from pumps without paying for fuel may be issued a restricted license for the purpose of driving to and from work and in the course of employment, or to and from a college/university if a full time student. Upon obtaining the order for the restricted license from the court, the order, \$65.00 license fee, and \$2.00 application fee should be presented at a Driver Services Center to make application for the restricted license.

IV. INSTRUCTIONS FOR ISSUANCE OF A RESTRICTED LICENSE IN PENDING DUI CASE

TCA 55-50-502(c)(3) allows for a judge to order a DUI offender to only drive to and from their place of work or to drive a vehicle equipped with an Ignition Interlock device while a DUI charge is pending. This restriction is in addition to any other restrictions on the license at the time - If Interlock is already required due to a prior revocation, you will be required to maintain Interlock while driving to and from work on the Pending DUI restricted license. Upon paying the required license fees, and providing an SR-22 Insurance form (policy or any other document is not acceptable), a 90-day interim license will be issued; the license fee is \$65.00 and the application fee is \$2.00. One (1) copy of the Court Order will be returned to you and must be kept with the temporary driving permit and then with the restricted license you receive by mail. Barring any complication, an original restricted license will be mailed to you within 90 days.

FOR YOUR RESTRICTED LICENSE TO BE VALID FOR DRIVING, THIS ORDER MUST BE KEPT WITH YOUR LICENSE AT ALL TIMES. IF YOU HAVE NEVER BEEN LICENSED IN TENNESSEE, THEN YOU WILL BE REQUIRED TO MEET ALL REQUIREMENTS OF A NEW RESIDENT IN ADDITION TO THE ABOVE REQUIREMENTS.

RESTORATION OF VOTING RIGHTS

Division of Elections
Secretary of State Tre Hargett



State of Tennessee
312 Ross L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243
615-741-7956

CERTIFICATE OF RESTORATION OF VOTING RIGHTS for Persons Convicted of a Felony on or after May 18, 1981

This includes any federal or state felony conviction both
within Tennessee or from another state.

TO BE COMPLETED BY AN AGENT OF THE PARDONING AUTHORITY, AN AGENT OR OFFICER OF THE INCARCERATING AUTHORITY, OR A PROBATION/PAROLE OFFICER OR AGENT OF THE SUPERVISING AUTHORITY. A SEPARATE FORM MUST BE COMPLETED FOR EACH FELONY CONVICTION WITH A DIFFERENT DOCKET/CASE NUMBER. THE PERSON CONVICTED OF THE FELONY OFFENSE MAY NOT COMPLETE THIS FORM.

1. I hereby certify that the following information is true and correct:

- a. Applicant's Name: _____ (First) _____ (Middle) _____ (Last)
b. Applicant's County of Residence: _____ c. Applicant's Phone Number: _____
d. Felony Conviction: _____
e. Month/Day/Year of Conviction: _____ f. TOMIS ID: (if applicable) _____
g. Date of Birth: _____ h. Soc. Sec. No.: _____

2. On the _____ day of _____, _____ (check one)

- ☐ The above individual received a pardon which contained no special conditions pertaining to the right of suffrage. A copy of said pardon is attached hereto; or
☐ The maximum sentence imposed for such infamous crime has been served by the above individual; or
☐ The maximum sentence imposed for such infamous crime has expired; or
☐ The above individual has been granted final release from incarceration or supervision from either the United States Probation/Parole, a state Board of Probation/Parole, the Department of Correction, or county correction authorities.

Signature: _____ Date: _____
Printed Name: _____ Title: _____
Address: _____ Phone Number: _____

3. I hereby certify that the following is true and correct: (check one)

- ☐ The court did not order the above individual to pay any restitution as part of his or her sentence; or
☐ All of the restitution ordered by the court as a part of the sentence for the above individual has been paid; or
☐ For Federal Convictions Only, 18 U.S.C. § 3613(b) applies in this case and therefore the liability to pay has expired; or
☐ Restitution ordered by the court is owed.

Signature: _____ Date: _____
Printed Name: _____ Title: _____
Address: _____ Phone Number: _____

4. I hereby certify that the following is true and correct: (check one)

- ☐ The court did not order the above individual to pay any court cost as part of his or her sentence; or
☐ All court cost assessed against the above individual has been paid; or
☐ The court has made a finding at an evidentiary hearing that the above individual is indigent at the time of application; or
☐ Court costs ordered by the court are owed.

Signature: _____ Date: _____
Printed Name: _____ Title: _____
Address: _____ Phone Number: _____

INSTRUCTIONS

Instructions to the Agent Completing the Certificate of Restoration:

In order to complete any section of this form, the agent must have access to the information being attested to on this form.

1. In **BOX #1**, the proper authority/agent must provide the requested applicant information.

NOTE: For 1d, list the crime(s) for which the person was convicted.

For 1e, list the date the person was convicted for the crime listed in 1d.

2. In **BOX #2**, the proper authority/agent must provide the following information:

- a) Provide the date that corresponds to the box that is checked
- b) Check the appropriate box indicating how the applicant completed their sentence
- c) Provide your signature (print name below signature) and contact information

3. In **BOX #3**, the proper authority/agent must provide the following information:

- a) Check the appropriate box as it relates to any restitution that was or was not assessed to the applicant.
- b) Provide your signature (print name below signature) and contact information.

4. In **BOX #4**, the proper authority/agent must provide the following information:

- a) Check the appropriate box as it relates to any court fines that were assessed to the applicant.
- b) Provide your signature (print name below signature) and contact information.

Persons convicted of any of the following, cannot have his or her voting rights restored:

- Between July 1, 1986, and June 30, 1996 - first degree murder, aggravated rape, treason, or voter fraud
- Between July 1, 1996, and June 30, 2006 - murder, rape, treason, or voter fraud
- On or after July 1, 2006 – Any of the above, or any degree of murder or rape or any felony offense under TCA Title 39, Chapter 16, parts 1, 4, or 5; or any sexual offense under TCA §40-39-202(20) or any violent sexual offense under TCA § 40-39-202(30) designated as a felony and where the victim of such offense was a minor

Instructions to the Applicant Seeking to have His or Her Voting Rights Restored:

- After completion, the original form must be filed with the local county election commission office in the county the applicant desires to register to vote.

NOTICE

A person is not eligible to apply for a voter registration card and have their voting rights restored unless the person is current in all child support obligations. Before restoring the voting rights of an applicant, the Coordinator of Elections will verify with the Department of Human Services that the applicant does not have any outstanding child support payments or arrearages.

SS-3041 Certificate of Restoration of Voting Rights



Eligibility to Vote after a Felony Conviction

If you have had a felony conviction, your eligibility to register and vote depends upon the crime you were convicted of and the date of your conviction. For more information about this process, call our office at 1-877-850-4959 or visit our website at <https://sos.tn.gov/products/elections/restoration-voting-rights>.

If your conviction has been expunged, you may answer "No" when asked if you have a felony conviction on the voter registration form.

Conviction on or after May 18, 1981

All convictions for a crime that is a felony in Tennessee, whether by a Tennessee court, a court in another state, or a federal court, cause you to forfeit your eligibility to vote. You may regain your eligibility to vote if you have your conviction expunged or if you have your voting rights restored.

However, you are never eligible to register and vote if you were convicted of specific felonies within specific date ranges:

After July 1, 1986

- Voter fraud
- Treason
- First-degree murder
- Aggravated rape

After July 1, 1996, to June 30, 2006

- Voter fraud
- Treason
- Any degree of murder or rape

After July 1, 2006

- Voter fraud
- Treason
- Any degree of murder or rape
- Certain felonies involving bribery, misconduct involving public officials and employees, or interference with government operations
- Sexual offenses or violent sexual offenses that are felonies where the victim was a minor

Conviction between January 15, 1973, and May 17, 1981

All persons who were convicted during this time period are eligible to vote. You do not need to have your rights restored, but the Division of Elections will need to verify you were convicted during this time period.

Conviction prior to January 15, 1973

You still have the right to vote unless you were convicted of one of the following crimes:

- | | | |
|--|---|--------------------------|
| • Abusing a female child | • Felonious breaking and entering a dwelling house | • Forgery |
| • Arson and felonious burning | • Larceny | • Destroying a will |
| • Bigamy | • Horse stealing | • Incest |
| • Bribery | • Robbery | • Rape |
| • Burglary | • Stealing bills of exchange or other valuable papers | • Sodomy |
| • Felonious breaking into a business house, outhouse other than a dwelling house | • Receiving stolen property | • Buggery |
| | • Counterfeiting | • Perjury |
| | | • Subornation of perjury |

Even if you were convicted of a crime listed above, you still have the right to vote if you can show that at the time of your conviction the judge did not render you "infamous," if your conviction was reversed on appeal or expunged, if you received a full pardon, or if you have your voting rights restored.

GLOSSARY

GLOSSARY OF LEGAL TERMS

A

Acquittal – A jury verdict that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support a conviction.

Administrative Office of the Tennessee AOC – The state agency responsible for collecting court statistics, administering the state courts' budget, and performing many other administrative and programmatic functions.

Admissible – A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

Affirmed – In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

Alternate juror – A juror selected in the same manner as a regular juror who hears all the evidence, but does not help decide the case unless called on to replace a regular juror.

Alternative dispute resolution (ADR) – A procedure for settling a dispute outside the courtroom. Most forms of ADR are not binding, and involve referral of the case to a neutral party such as an arbitrator or mediator.

Amicus curiae – Latin for “friend of the court.” It is advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

Automatic stay – An injunction that automatically stops lawsuits, foreclosures, garnishments, and most collection activities against the debtor the moment a bankruptcy petition is filed.

B

Bankruptcy trustee – A private individual or corporation appointed in all Chapter 7 and Chapter 13 cases to represent the interests of the bankruptcy estate and the debtor's creditors.

Bench trial – A trial without a jury, in which the judge serves as the fact-finder.

Brief – A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments.

C

Capital offense – A crime punishable by death

Claim – A creditor's assertion of a right to payment from a debtor or the debtor's property.

Class action – A lawsuit in which one or more members of a large group, or class, of individuals or other entities sue on behalf of the entire class.

Clerk of court – The court officer who oversees administrative functions, especially managing the flow of cases through the court.

Community service – A special condition the court imposes that requires an individual to work – without pay – for a civic or nonprofit organization.

Complaint – A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

Concurrent sentence – Incarceration terms for two or more offenses to be served at the same time, rather than one after the other. Example: Two five-year sentences and one three-year sentence, if served concurrently, result in a maximum of five years behind bars.

Consecutive sentence – Incarceration terms for two or more offenses to be served one after the other.

Conviction – A judgment of guilt against a criminal defendant

Count – An allegation in an indictment or information, charging a defendant with a crime. An indictment or information may contain allegations that the defendant committed more than one crime. Each allegation is referred to as a count.

Court – Government entity authorized to resolve legal disputes.

Creditor – A person to whom or business to which the debtor owes money or that claims to be owed money by the debtor.

D

Discharge – A release of a debtor from personal liability for certain dischargeable debts.

Discovery – Procedures used to obtain disclosure of evidence before trial.

Dismissal with prejudice – Court action that prevents an identical lawsuit from being filed later.

Dismissal without prejudice – Court action that allows the later filing.

Docket – A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Due process – In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

E

Equitable – Pertaining to civil suits in “equity” rather than in “law.”

Executory contracts – Contracts or leases under which both parties to the agreement have duties remaining to be performed.

H

Hearsay – Evidence presented by a witness who did not see or hear the incident in question, but heard about it from someone else.

I

In camera – Latin, meaning in a judge’s chambers. Often means outside the presence of a jury and the public. In private.

In forma pauperis – “In the manner of a pauper.” Permission given by the court to a person to file a case without payment of the required court fees because the person cannot pay them.

Information – A formal accusation by a District Attorney that the defendant committed a misdemeanor.

Interrogatories – A form of discovery consisting of written questions to be answered in writing and under oath.

J

Jurisdiction – The legal authority of a court to hear and decide a certain type of case.

Jury instructions – A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

L

Lien – A charge on specific property that is designed to secure payment of a debt or performance of an obligation.

M

Mistrial – An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

Moot – Not subject to a court ruling because the controversy has not actually arisen, or has ended.

Motion in Limine – A pretrial motion requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial or in civil cases to determine the allowance of evidence.

O

Opinion – A judge's written explanation of the decision of the court.

P

Parole – The release of a prison inmate – granted by the U.S. Parole Commission – after the inmate has completed part of his or her sentence in a federal prison.

Pleadings – Written statements filed with the court that describe a party's legal or factual assertions about the case.

Pretrial services – A meeting of the judge and lawyers to plan the trial, to discuss which matters should be presented.

Pro se – Representing oneself. Serving as one's own lawyer.

Procedure – The rules for conducting a lawsuit; there are rules of civil procedure, criminal procedure, evidence, bankruptcy, and appellate procedure.

Prosecute – To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government.

R

Redemption – Delinquent taxes

Reverse – The act of a court setting aside the decision of a lower court.

S

Sanction – A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

Sentence – The punishment ordered by a court for a defendant convicted of a crime.

Statute of limitations – The time within which a lawsuit must be filed or a criminal prosecution begun. The deadline can vary, depending on the type of civil case or the crime charged.

Sua sponte - Latin, meaning “of its own will.” Often refers to a court taking an action in a case without being asked to do so by either side.

Subpoena duces tecum – A command to a witness to appear and produce documents.

T

Temporary restraining order – Akin to a preliminary injunction, it is a judge’s short-term order forbidding certain actions until a full hearing can be conducted. Often referred to as a TRO.

Testimony – Evidence presented orally by witnesses during trials or before grand juries.

Toll – See statute of limitations.

Transcript – A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition.

Transfer – The removal of a case from one jurisdiction to another jurisdiction within the same state.

U

Unlawful detainer action – A lawsuit brought by a landlord against a tenant to evict the tenant from rental property – usually for nonpayment of rent.

Uphold – The appellate court agrees with the lower court decision and allows it to stand. See affirmed.

V

Venue – The geographic area in which a court has jurisdiction.

Verdict – The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

W

Wage garnishment – A nonbankruptcy legal proceeding whereby a plaintiff or creditor seeks to subject to his or her claim the future wages of a debtor.

Warrant – Court authorization, most often for law enforcement officers, to conduct a search or make an arrest.

Witness – A person called upon by either side in a lawsuit to give testimony before the court or jury.