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Sheriff's Duty to Serve Civil Process

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

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Sheriff's Duty to Serve Civil Process

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If confronted with the impending loss of your home, bank account, or personal belongings, how hard would you work to neutralize the threat? This question is relevant because the statutory duty of care for executing civil process in Tennessee demands that the sheriff:

Use, in the execution of process, a degree of diligence exceeding that which a prudent person employs in such person's own affairs.

T.C.A. § 8-8-201(10) (emphasis added).

While a sheriff's responsibility to serve civil process is not nearly as exciting as criminal law enforcement, nor as fraught with constitutional complications as jail operations, it *is* the means by which representatives of the sheriff's office are most likely to have contact with members of the business community, landlords, public and private organizations, civil attorneys, and many government agencies. Professional, competent service and execution of process enhances the reputation of the sheriff's office.

Conversely, disobedience of the command of the process, whether by negligence, ignorance, or indifference, not only harms the agency's reputation but may lead to an award of money damages or findings of contempt of court against the sheriff or the sheriff's deputies. T.C.A. § 8-8-207. It should be kept in mind that in many cases the acts of the deputy on the sheriff's behalf are deemed to be equivalent to those of the sheriff. T.C.A. §§ 29-18-115(d)(1) and 29-20-205.

Sanctions and penalties for various missteps along the civil process pathway vary. The aggrieved party may recover full damages from the sheriff for the harm caused by failure to comply with the orders contained on the process. T.C.A. § 8-8-207. The law also provides for a \$125 penalty against a sheriff who fails to execute and make return of any process issued by a general sessions court or a court of record within the time frames specified by statute. T.C.A. § 25-3-105(a)(1) and (b)(1). A sheriff or deputy who neglects or refuses to execute any process governed by Title 29 of the Code, which governs detainers, *i.e.*, evictions, "shall forfeit \$250 to the party aggrieved . . ." T.C.A. § 29-18-116.

Congress has not laid down rules for service of process; hence, it is generally governed by state laws. *Amy v. City of Watertown*, 130 U.S. 301, 304, 9 S.Ct. 530, 531, 32 L.Ed. 946 (1889). The *Tennessee Code Annotated* and the Tennessee Rules of Civil Procedure set forth requirements for legally effective service of civil process. Title 8 of the Code enumerates the duties of the sheriff, but several other titles include further particulars for executing specific kinds of process. Among the Rules of Civil Procedure, Rule 4, "Process," Rule 54, "Judgments and Costs," and Rule 69, "Execution on Judgments," are most relevant to understanding legal mandates to the sheriff regarding civil matters.

Generally, effective service of process consists of a few seemingly simple steps:

1. Mark on all process the date it was received by the sheriff. T.C.A. § 8-8-201(a)(4); § 20-2-103(a).
2. Serve the process; execute all writs and other process legally issued and directed to the sheriff. T.C.A. § 8-8-201(a)(5)(A).
3. Make a timely, due return of the process, either personally or by a lawful deputy. T.C.A. § 8-8-201(a)(5)(A).

Judicial interpretation of the law surrounding service of process is generally well settled; many of the most cited cases reach back to Tennessee Supreme Court decisions from the 19th century.

However, the sheriff's job is complicated by several factors. On one hand, the Rules of Civil Procedure supply detailed guidance for effective service. On the other, our state Supreme Court has held that, where a statute dealing with a particular type of judicial action contains specific provisions for process and service, that method is permissible and may be followed in lieu of the Rules. *State Board of Education v. Cobb*, 557 S.W.2d 276 (Tenn. 1977). Since statutes regarding specific kinds of judicial actions are spread throughout a multitude of Tennessee Code titles, and different laws enacted at different times occasionally appear to conflict, compliance can become complicated.

The legal terms related to process and its service are generally a product of English laws dating back to the 17th and 18th centuries. The words themselves are often arcane, antiquated, and do not blend easily with modern vocabulary. What, for instance, might a citizen envision when advised that the sheriff has left the office to carry out a "body execution," or is off serving a "body attachment?" Fortunately, the legal expectation for carrying out that function is far less harsh than might be contemplated by a layperson.

Another impediment for the sheriff's staff is the occasional confusion among the counties caused by variations in local customs about what name a particular kind of process is actually called. For example,

the judicial order called a "writ of restitution" in one county may be called a "writ of possession" in another, despite the fact that service, execution, and the results of those actions are exactly the same in both cases.

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