



May 19, 2024

Return of Service

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,

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Reference Number: CTAS-1299

The return is made by the deputy who serves the process. It is simply a written statement that constitutes proof of service or otherwise explains what was done under the process issued by the court for service. *David v. Reaves*, 75 Tenn. 585, 590 (1881). The return must either indicate that the command of the process was fully carried out or honestly state the facts that prevented compliance. *Eaken v. Boyd*, 37 Tenn. 204 (1857).

Returns are to be made in ink "or some other nonerasable material or fluid." Failure to follow this directive does not invalidate the return, but any deputy who violates the statute commits a Class A misdemeanor and is liable to any person harmed by the violation. T.C.A. § 20-2-111.

An inaccurate, carelessly made, or untruthful return is a serious matter that can lead to a damaging outcome for the parties and for the officer who may be penalized monetarily or otherwise held liable for his or her breach of duty. The return must identify the person served and describe the manner in which service was accomplished. Rule 4.03, Tenn. R. Civ. P. If the officer alleges on the return that the defendant is a resident of the county evading service of process, there must be a showing that a "diligent inquiry" was conducted, or the return is subject to be found untrue. *Willshire v. Frees*, 201 S.W.2d 675, 184 Tenn. 523 (1947).

In addition to the above-mentioned penalties and liabilities, T.C.A. § 25-3-101 allows for a judgment by motion to be obtained by a plaintiff against the sheriff if the sheriff or his deputy:

1. Fail to make due and proper return of an execution;
2. Make a false or insufficient return; or,
3. Fail to pay over money collected on an execution.

The time limitations for service and return of process vary greatly depending on the nature of the process itself. Some, such as orders of protection, instanter subpoenas, and orders for child custody transfer, are to be carried out immediately. Other forms of process, such as summons, may allow as much as 90 days for service.

Clearly, multitudinous legal mandates exist regarding what constitutes sufficient service and return of civil process, be they found in state statutes, the rules of civil procedure, case law, opinions of the attorney general, or some other legal authority or treatise. Sheriffs can seek guidance from their county attorney or some other attorney to assist in efforts to strictly comply with those mandates, and procedural details will not be examined at great length here.

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