

STATE COURT CLERKS

Duties and Responsibilities

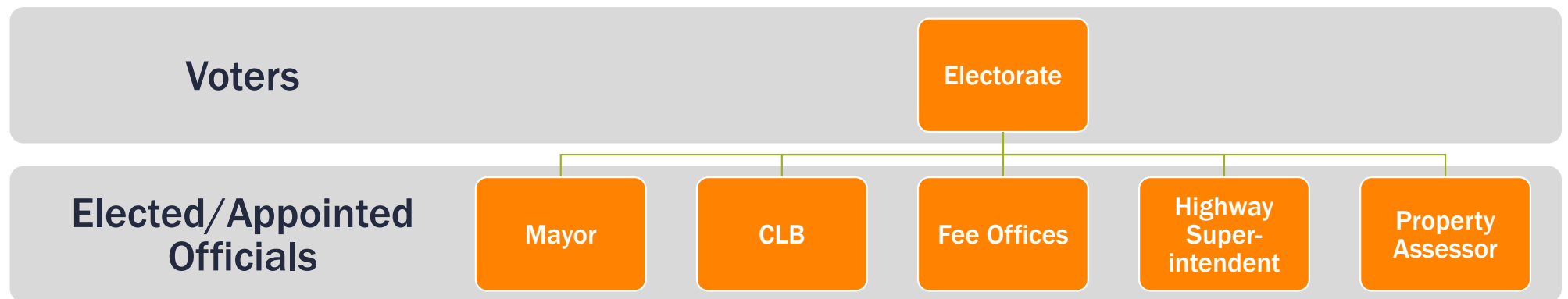


COUNTY OFFICIALS ORIENTATION PROGRAM 2022

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COUNTY GOVERNMENT STRUCTURE



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CLERKS OF COURT

Chancery

Circuit

Criminal

General
Sessions

Juvenile



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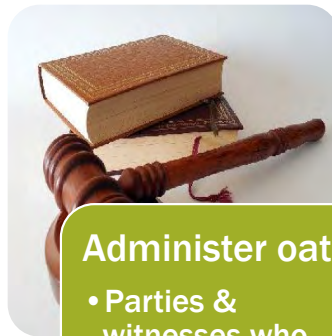
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T.C.A. TITLE 18 CLERKS OF COURTS (DUTIES)



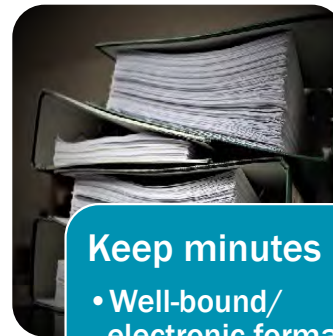
Attend court

- Manage paperwork for cases



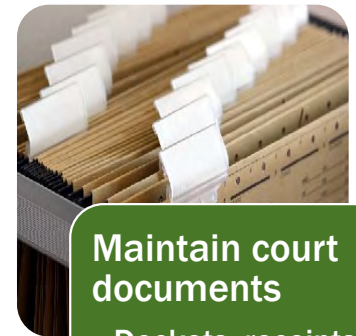
Administer oaths

- Parties & witnesses who testify



Keep minutes

- Well-bound/
electronic format



Maintain court documents

- Dockets, receipts, disbursements
- Indexes of books & dockets



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ATTEND EACH COURT SESSION WITH ALL PAPERS FOR CASES ON THE DOCKET



Well organized court file

All papers bound and in order

Petitions, warrants, motions

**Be familiar with the
case.....status....why is the case
on the docket?**

**Was everyone notified to be
here?**

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ADMINISTERING OATHS

**In the courtroom -
Some clerks do/
Some clerks don't**

**Court officers may
do this in**

**In the office –
Some forms
require
administering an
oath**



MAINTAINING RULE AND EXECUTION DOCKETS

RULE DOCKET:

List of events/filings in a case

First thing on list should be petition/warrant (initial document)

Last thing on list should be the most recent filing or court appearance.

EXECUTION DOCKET:

TCA 8-21-401

Should provide a break down of all charges and payments

Gives a current balance



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INVESTING FUNDS

T.C.A. § 18-5-105

- Fiduciary responsibility to invest funds resulting from court actions, usually involving minors



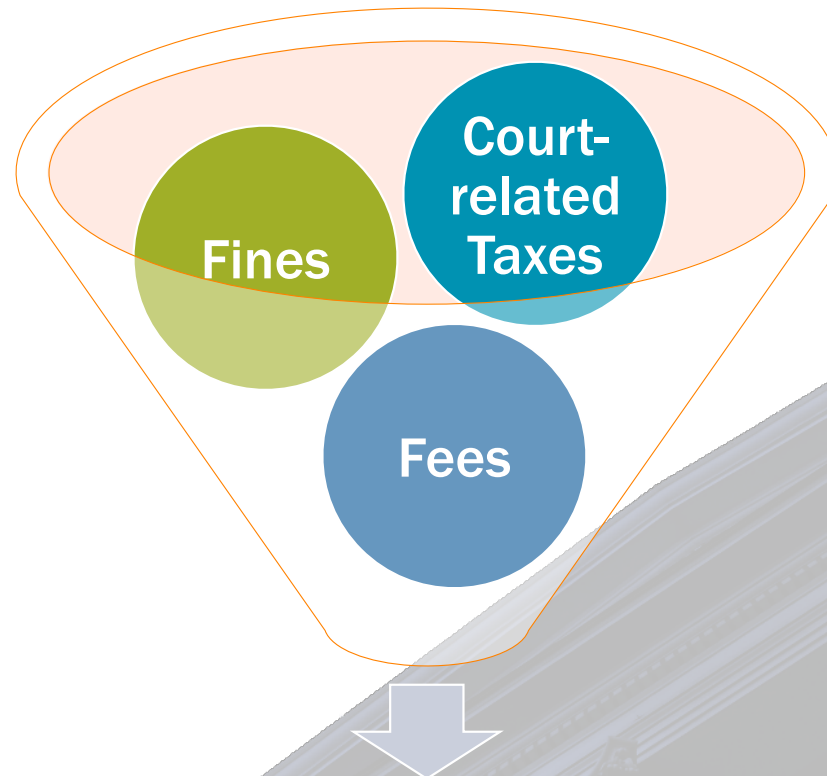
DELINQUENT TAX SALES

T.C.A. § 8-21-401

- Clerk and Master conducts delinquent tax sales of property as ordered by the court



COURT REVENUES



Chancery | Circuit | Criminal | General Sessions



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CASH JOURNAL



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CLERK REVENUES – FEES



TCA 8-21-401
Filing documents
Expunging cases
Making copies

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OFFICIAL BANK ACCOUNT

Required to maintain a bank account in name/title of Circuit Court Clerk/Sessions Court Clerk/Juvenile Court Clerk

Disbursements made by pre-numbered checks

Deposit all funds within 3 business days after receipt



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FORM OF PAYMENT



Checks
Money orders
Credit or debit cards
Online payments

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RECEIPTS

You must issue a receipt for money received and keep a duplicate in the office

Duplicate receipts must be kept for at least 5 years & be available upon demand

Receipts must be consecutively numbered & kept in a well-bound book or in a manner approved by the Comptroller of the Treasury



COURT CLERK REVENUES – FEES

Court Clerks can charge a computer fee of \$4 per case to be earmarked for computer expenses – at the discretion of the Clerk.



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COUNTY REPORTS

Court Clerk shall keep a complete account of every fee of every nature and shall file an itemized statement monthly with the county mayor.

Court Clerk shall remit to the county trustee all of the fees, commissions, and fees collected on a monthly/quarterly basis.



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STATE REPORTS



Department of Revenue. Taxes collected are remitted by the 15th day of the month following the month in which funds were collected.

Department of Safety

TBI

Public Defender Conference



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FINANCIAL ISSUES EFFECTING STATE COURT CLERKS

COOP 2022



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LEGAL AUTHORITY

Private Act

General Law

1981/1957
Acts

Charter/
Metro



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BUDGETARY VS FEE SYSTEM

County commission decides whether fee offices are on Budgetary or Fee System:

Budgetary System

All fees are turned over to the general fund monthly

All expenses of the office are budgeted

Sheriff is always under budgetary system

Fee System

Only “excess” fees are turned over quarterly

Salaries and expenses are paid from fee account

Population exception for a few counties regarding fee remittance



FEE SYSTEM -AUTHORIZED RESERVE FUNDS

An amount equal to 3 times the monthly salaries of the circuit court clerk, deputies, & assistants

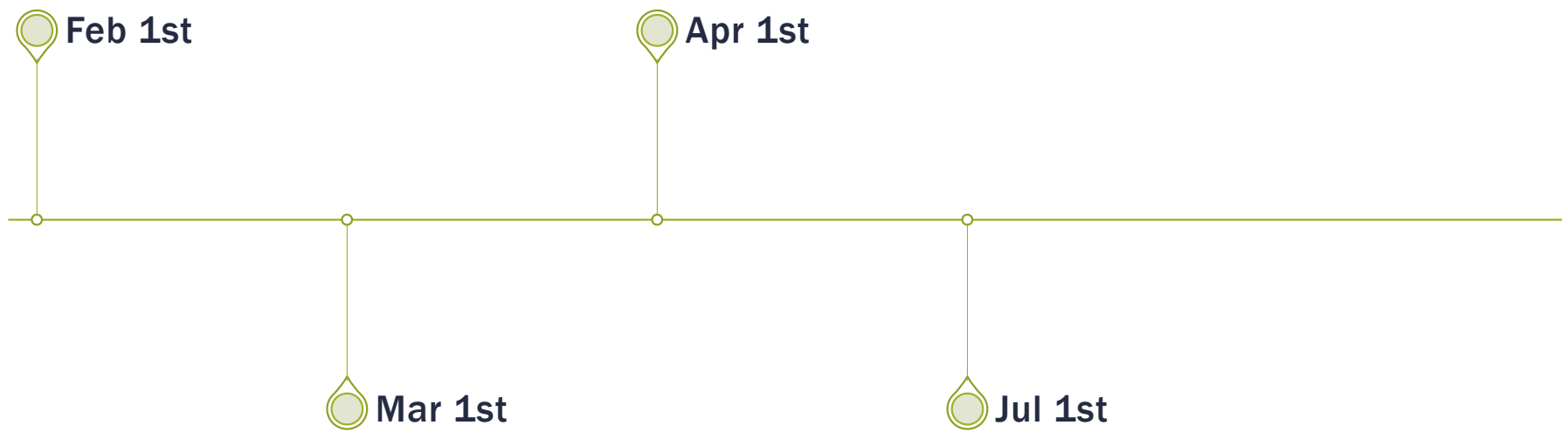


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BUDGET TIMELINE

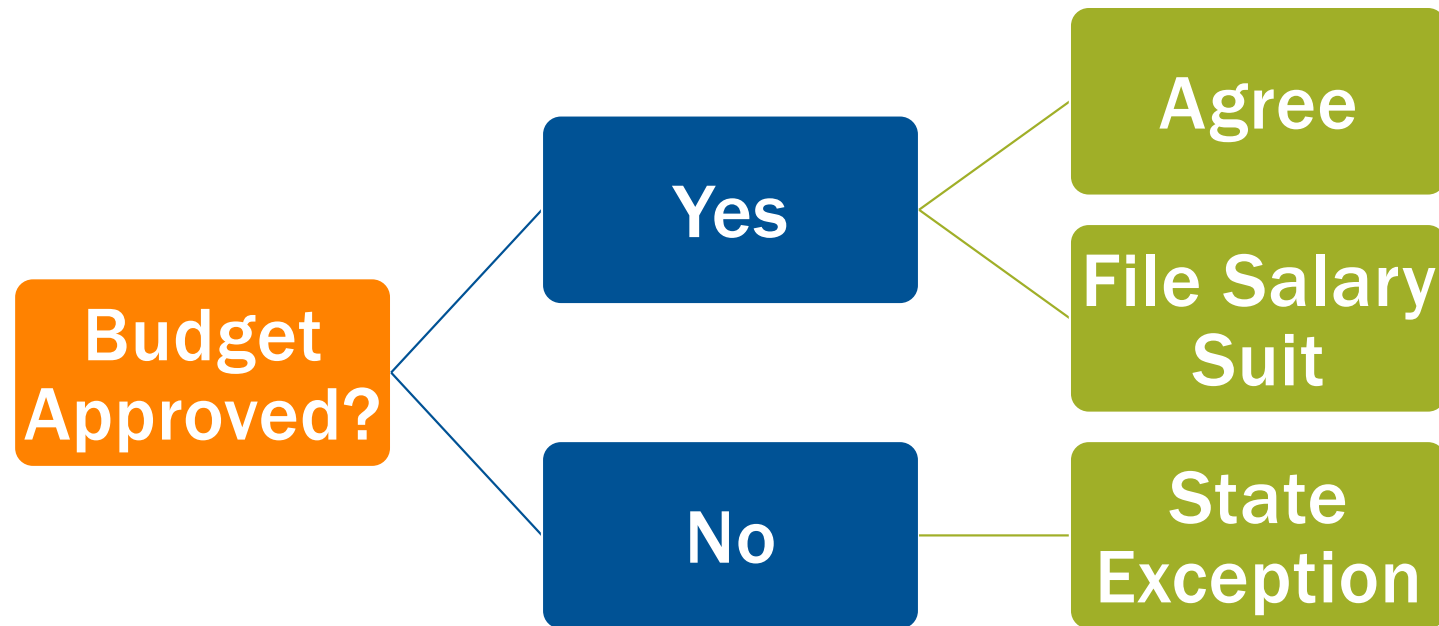


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YOUR BUDGET



LETTER OF AGREEMENT/ SALARY SUIT

Agree with personnel budget?

Yes
Letter of Agreement

No
Salary Suit

Either must be done within 30
days of the budget's passing.

*Newly elected officials have 30 days from taking office (Sept 1) to sign letter of agreement or file a salary suit.



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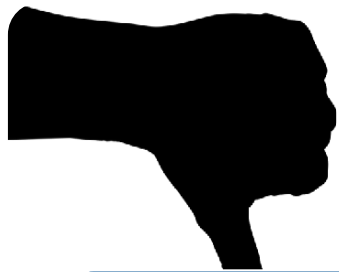
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YOUR BUDGET – LETTER OF AGREEMENT

Generally, must have authority other than the county budget resolution before hiring employees.



YOUR BUDGET – SALARY SUIT



Official
disagrees
with
personnel
budget



Files salary
suit

- Mayor named Defendant
- Must answer within 5 days



Hearing



Order issued
determining
compensation



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SAMPLE LETTER OF AGREEMENT

<p style="text-align: center;">LETTER OF AGREEMENT COMPENSATION OF EMPLOYEES _____ COUNTY, TENNESSEE</p> <p>Pursuant to Tennessee Code Annotated, Section 8-20-101, this agreement by and between _____ and _____ (Official/Office) (County Mayor)</p> <p>is for the purpose of establishing the number of employees and the authorized salaries for the _____ (Office)</p> <p>The parties named herein have agreed and do hereby enter into this agreement according to the provisions set forth herein:</p> <p>A. The term of this agreement will be from _____ to _____ (Beginning Date) (Ending Date)</p> <p>B. In order to ensure the efficient operation of the office, it is agreed that the official is authorized to employ the following employees at salaries not to exceed the specified amounts:</p> <table border="0" style="width: 100%;"><thead><tr><th style="text-align: left;">Number of Employees in Job Classification</th><th style="text-align: left;">Job Classification</th><th style="text-align: left;">Annual Salary for Each Employee in Job Classification Not to Exceed</th></tr></thead><tbody><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr></tbody></table>	Number of Employees in Job Classification	Job Classification	Annual Salary for Each Employee in Job Classification Not to Exceed	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	<p>C. It is further agreed that part-time help may be employed at a rate of up to \$ _____ an hour with a total cost not to exceed \$ _____ for the term of this agreement.</p> <p>D. The parties agree to the following special provisions: _____</p> <p>E. It is further agreed that in no event shall the amount of this agreement exceed \$ _____.</p> <p>In witness whereof, the parties have set their signatures.</p> <table border="0" style="width: 100%;"><tr><td style="width: 50%; text-align: center;">_____ OFFICIAL</td><td style="width: 50%; text-align: center;">_____ DATE</td></tr><tr><td style="width: 50%; text-align: center;">_____ COUNTY MAYOR</td><td style="width: 50%; text-align: center;">_____ DATE</td></tr></table>	_____ OFFICIAL	_____ DATE	_____ COUNTY MAYOR	_____ DATE
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_____ COUNTY MAYOR	_____ DATE																						



BUDGET AMENDMENTS



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WHAT ARE INTERNAL CONTROLS?

A process that provides reasonable assurance the objectives of an entity will be achieved.



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T.C.A § 9-18-102(A)

Comply

Obligations and costs are in compliance with applicable law

Safeguard

Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

Record

Revenues and expenditures are properly recorded and accounted for to permit the preparation of accurate and reliable financial and statistical reports and to maintain accountability over the assets.



COUNTY OFFICIALS ORIENTATION PROGRAM 2022 **Law went into effect June 30, 2016!**

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WHY DO COUNTY GOVERNMENTS NEED INTERNAL CONTROLS?

Reduce fraud & waste

Ensure legal, regulatory, & policy compliance

Protect county assets

Promote transparency & accountability



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WHO IS RESPONSIBLE FOR ESTABLISHING INTERNAL CONTROLS?

County Management (elected/appointed officials) are responsible for:

**design, implementation and
maintenance**

of adequate internal controls over their office/department.



FRAUD DETECTION



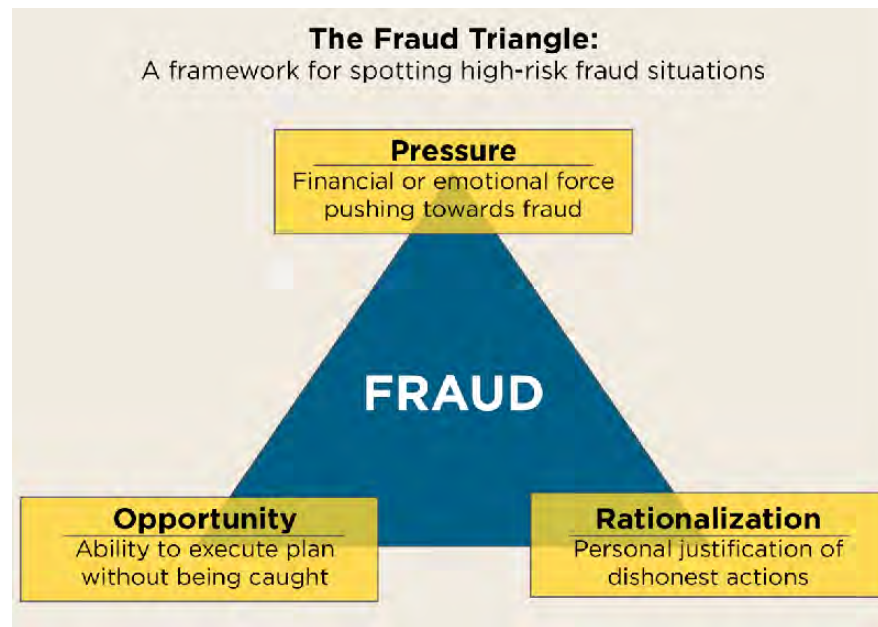
External auditors (performing routine annual audits) detect less than 5% of identified occupational fraud.

More fraud is identified by accident or through anonymous tips than by the external annual financial and compliance auditors.

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POOR INTERNAL CONTROLS = OPPORTUNITY FOR FRAUD



SUMMARY OF AUDIT FINDINGS

Duties were not segregated adequately

Execution docket trial balances did not reconcile with the general ledger accounts

Multiple employees operating from the same cash drawer

Deficiencies in accounting records, reconciliations, timely deposits, and audit log reviews



COMPONENTS & PRINCIPLES OF INTERNAL CONTROLS

Components	Principles
Control Environment	<ol style="list-style-type: none"> 1. Demonstrate Commitment to Integrity and Ethical Values 2. Exercise Oversight Responsibility 3. Establish Structure, Responsibility, and Authority 4. Demonstrate Commitment to Competence 5. Enforce Accountability
Risk Assessment	<ol style="list-style-type: none"> 6. Define Objectives and Risk Tolerances 7. Identify, Analyze, and Respond to Risk 8. Assess Fraud Risk 9. Analyze and Respond to Change
Control Activities	<ol style="list-style-type: none"> 10. Design Control Activities 11. Design Activities for the Information System 12. Implement Control Activities
Information & Communication	<ol style="list-style-type: none"> 13. Use Quality Information 14. Communicate Internally 15. Communicate Externally
Monitoring Activities	<ol style="list-style-type: none"> 16. Perform Monitoring Activities 17. Remediate Deficiencies

Source: GAO.



REDUCING RISKS TO TOLERABLE LEVELS...

Identify factors that may increase risk

- Lack of segregation of duties
- Computer passwords taped onto computers
- Employees operating out of same cash drawer, etc.

Determine the significance of risk and likelihood of fraud, waste, abuse and inaccurate financial reporting (think reducing risk vs. cost of control).

Develop specific actions to reduce the risk to an acceptable level.

A risk matrix is a very useful tool when you can't eliminate risk.



WHAT YOU ARE LOOKING FOR IN YOUR RISK ASSESSMENT...

Identify specific risks

Consider risk factors

Understand that the elected official is ultimately responsible

- Tone is set at the top

Be sure to update your written procedures for any changes you deem needed.



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PURCHASING AUTHORITY

Private Act

General Law

1981/1957
Acts

Charter/
Metro



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PURCHASING ABOVE BID LIMIT



If your purchase something above your bid limit you must use one of the below methods:

Competitive Sealed Bids

RFPs

Informal Quotations

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PURCHASING PROCESS



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Annual Clerks of Court Conference



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WRAP UP

Congratulations!

Welcome to county government!



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LEGAL ISSUES FOR COURT CLERKS

August 2022



COOP 2010



COOP 2014



COOP 2018



COOP 2022



COOP 2022 (CONT.)



OBJECTIVES

Requirements to
hold and keep
holding office

Disposal of
court records

Fine/fee/tax
collection issues



PART ONE

Legal Requirements to Hold and Keep Holding Office



TO HOLD OFFICE

- ▶ Article 6, Section 13 of the Tennessee Constitution:

**Clerk and Master
appointed to
6 year term**

**All other clerks must be
elected to
4 year terms**

- ▶ Legislative qualifications under T.C.A. § 8-18-101: open to all citizens of the United States and Tennessee who are at least 18 years of age except:

**Convicted of
offering or giving a
bribe or any other
offense declared
infamous by law**

**Against whom a
judgment remains
unpaid for moneys
received in an
official capacity**

**Defaulters to the
treasury at the time
of the election**

**Soldiers, sailors,
marines, or airmen
in the regular army,
navy, or air force of
the United States**

**Members of
congress, and
persons holding any
office of profit or
trust under the
United States**



TO KEEP HOLDING

SAVE JOBS

-

BUY LOCAL



TO KEEP HOLDING – CONT.

T.C.A. § 8-48-101:

- Death
- Resignation
- Judge declaring election void
- Penitentiary
- Insanity



OFFICIAL BOND

- ▶ Promise by official to county:
 - ▶ perform all duties
 - ▶ pay over all funds
 - ▶ keep records
 - ▶ turn over records, funds and property to successor
 - ▶ not do anything illegal or improper
- ▶ Approved by the Court
- ▶ Recorded in Register's office
- ▶ Filed in County Clerk's office
- ▶ As of 2016, counties can purchase insurance policies in place of official bonds



BOND AMOUNTS

Counties with
populations of
15,000 or more

\$100,000

Counties with
populations of less
than 15,000

\$50,000

Minimum amounts - court can require a greater sum.

Court may also require additional bond when acting as special commissioner or receiver.

Insurance option - \$400,000 per occurrence.



OUSTER

- ▶ An ouster proceeding is a civil, not a criminal, action
- ▶ AG, DA, county attorney or group of citizens
- ▶ Actions are brought in the circuit, chancery, or criminal court of the county wherein the official holds office

T.C.A. § 8-47-103.



OUSTER

Misconduct

Neglect

Public
intoxication

Illegal
gambling

Moral
turpitude



REMOVAL FOR OFFICIAL MISCONDUCT

Criminal convictions relating to an abuse of office may result in removal from office

- Not “ouster” suits

Defined in T.C.A. § 39-16-402

Persons convicted shall be disqualified from holding any office for at least 10 years or possibly forever



REMOVAL BY JUDGE/ CHANCELLOR

Reasons for Removal

- Committing any misdemeanor or felony in office
- Neglect of duty or misbehavior in office
- Refusing to pay over money collected in an official capacity
- Refusing to perform any duty required by law
- Knowingly making a false entry in a case



Removals can be appealed.

PART TWO

Disposal of Court Records



ONE MORE STEP FOR COURT CLERKS



- ▶ Court clerks need to involve a judge in the review process for destroying records of court proceedings.
- ▶ Records and documents of court proceedings can only be destroyed after a judge has issued an order authorizing their destruction.

T.C.A. § 18-1-202(A)

Can destroy many records under the direction & order of judge

- 10 years after a judgment has been entered and appeal times have lapsed for all parties

Clerks must retain as permanent records:

- Pleadings; Original process and original opinion; Original rules; Appearance and execution dockets; Minute books; and Plat or plan books

Juvenile Court Exception:

- May dispose of records in delinquent and unruly juvenile court cases after a period of ten (10) years following the juvenile reaching eighteen (18) years of age.
- Prior to ordering the clerk to dispose of original documents, the court must notify the district attorney general of the proposed order and provide the district attorney general reasonable time to file a notice of opposition to the proposed order. All other records,



T.C.A. § 18-1-202(B)

- ▶ Additionally, in civil cases, a judge may order the clerk to destroy discovery materials, briefs, cost bonds and subpoenas 3 years after the final disposition of the case.
- ▶ Must notify the parties prior to destruction.
- ▶ Cannot destroy if any party is a minor.

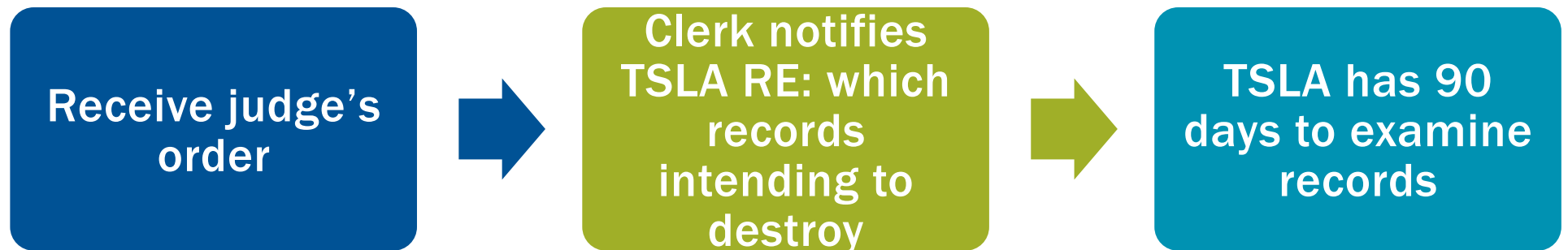




T.C.A. § 18-1-203

- ▶ Any order issued shall be entered on the court minutes, setting forth generally what papers, books, documents and records may be disposed of by the court clerk.
- ▶ A detailed inventory in the minute entry is not required.

T.C.A. § 18-1-204



PHYSICAL EVIDENCE

- ▶ Slightly more complicated process than documents
- ▶ Can dispose of sooner than documents though
- ▶ 30 days' notice to attorneys of record to come pick up
- ▶ If don't pick up, follow T.C.A. § 18-1-206



T.C.A. § 18-1-206

- ▶ Must make an inventory
 - ▶ Publish for 3 consecutive weeks
 - ▶ Parties may object to disposal



T.C.A. § 18-1-206

Judge may order the items:

- ▶ Returned to owner;
- ▶ Preserved for historical purposes;
- ▶ Sold; or
- ▶ Destroyed.



T.C.A. § 18-1-206

Clerk turns over
order & items to
sheriff.



Sheriff delivers
items to their
owners, to a
historical
organization,
advertises and
sells/ destroys
items.



Sheriff files an
affidavit
concerning
destruction with
court.



FIREARMS

Stolen?

Returned to rightful
owner

Not stolen?

Court's discretion
whether it is sold,
destroyed, or used for
legitimate law
enforcement
purposes

T.C.A. § 39-17-1317 and 39-17-1318



PART THREE

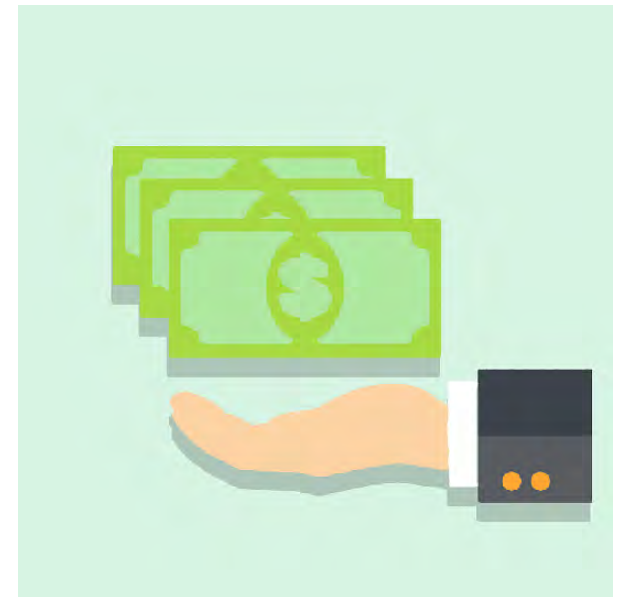
Fine, Fee, and Tax Collection Issues



DUTY TO COLLECT

- ▶ Any officer who fails to charge or collect every fee the county may be entitled to shall be held individually liable to the county for the amount that should have been collected
- ▶ The amount not collected shall be charged against the officer and deducted from the officer's salary
 - ▶ Or collected from the officer by law

T.C.A. § 8-22-105



ONLY COLLECT LAWFUL AMOUNTS

T.C.A. § 8-21-101

- No officer is allowed to demand/receive fees for any service other than what is expressly provided by law.

T.C.A. § 8-21-103

- If any officer demands/receives any other or higher fees than are prescribed by law, such officer is liable to a penalty of \$50.00, to be recovered before any general sessions court judge.
- Class C misdemeanor.



I'M CONFUSED??

It is the duty of the courts to decide any question arising under the law

- Officer entitled to the compensation in question must submit application

Such decision will protect the officer acting under it

T.C.A. § 8-21-105



COLLECTION METHODS

**Two Primary
Statutes:**

**Criminal Cases
T.C.A. § 40-24-105**

**Civil Cases T.C.A. §
20-12-144**



T.C.A. § 40-24-105(A)

- ▶ Fine may be collected in the same manner as a judgment in a civil action.
 - ▶ Garnish money/wages
 - ▶ Executions on personal property or real estate
- ▶ Fine may be collected by contempt proceeding by court.
 - ▶ Hearing required
 - ▶ Non-payment must be willful
- ▶ Cost and litigation taxes may be collected in the same as a judgment in a civil action, but not by imprisonment under this subsection.

Allocation Formula:



DRIVER LICENSE REVOCATION

T.C.A. § 40-24-105(B)

Clerk must offer installment payment plan if requested or if not fully paid within one (1) year of the completion of the sentence

- Must be based on income and ability to pay

Clerk notifies department of safety of failure to pay according to payment plan

- 30 days to correct
- Fails to correct then issued restricted license

Repeat same process with restricted license

- 6 months to reapply for restricted license

Indigency exception

- Apply to court for pausing of required payment
- Court can make reappear for future evaluation of indigency

Similar process for driving offenses under TCA 55-50-502



T.C.A. § 40-24-105(C)



District attorney general, county, or municipal attorney may institute proceedings to collect the fine, costs, and litigation taxes as a civil judgment upon order of the court.

T.C.A. § 40-24-105(D)

If any fines, costs or litigation taxes are in default for at least 6 months, then the DA or clerk may retain an agent to collect or establish an in-house collection procedure.

If DA and clerk cannot agree on who collects, the presiding judge of the judicial district or a general sessions judge shall make the decision.

Clerk may retain up to 50% of collected amounts in accordance with any in-house collection procedure (shall be treated as other fees of the office).

Collection Agent

- County purchasing agent to bid
- Collection agent's fee added to amount owed
- Maximum agent fee is 40%



T.C.A. § 40-24-105(E)&(F)

- ▶ Subsection (e) only relates to cities.
- ▶ Subsection (f):
- ▶ Any fine, costs or litigation taxes assessed against a defendant in a criminal case may be converted to a civil judgment pursuant to the Tennessee Rules of Civil Procedure when the defendant is released from their sentence.



T.C.A. § 40-24-105(G)

- ▶ Can accept lump sum settlement of fine, costs, or litigation taxes in default for at least 5 years.
- ▶ Must be approved by the court.
- ▶ Settlement amount must be at least 50% of the combined outstanding balance of all fines, costs, and litigation taxes due on the case.

Allocation Formula*:



*except the percentage that may be retained by the clerk pursuant to subsection (d) may be withheld.

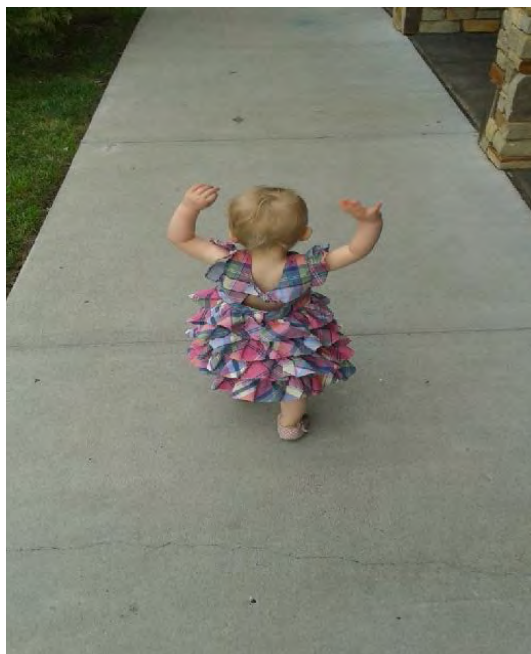


T.C.A. § 20-12-144

- ▶ After in default for at least six months, the clerk may retain an agent to collect or establish an in-house collection procedure.
- ▶ The clerk may retain up to 50% of collected amounts in accordance with any in-house collection procedure (shall be treated as other fees of the office).
- ▶ Collection Agent
 - ▶ Use county's normal competitive bidding procedure and clerk shall award bid with approval of the judge of the affected court
 - ▶ Collection agent's fee added to amount owed
 - ▶ Maximum agent fee is 40%



BYE Y'ALL!!



OVERVIEW OF OFFICE RESPONSIBILITIES

Presented by Heather H. Duncan, CTAS County Government
Consultant
August 25, 2022



EVERYTHING IS THE RESPONSIBILITY OF THE COURT CLERK



**COURT CLERK GETS CREDIT
WHEN THINGS FLOW
SMOOTHLY**



**COURT CLERK GETS BLAME
WHEN THINGS GO BAD**



**ACCEPT IT AND ENSURE
THINGS FLOW SMOOTHLY**



SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



Collecting Administrative Fees



Filing Bonding Agency Petitions and Reports



Maintaining numerous reports for the county, city, state and others



SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



**Certifying orders and
authenticating judgments**

Filing civil petitions

Entering judgments

SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



**Executing
garnishments and
levies**



Collecting Clerks fees



**Providing records
searches**



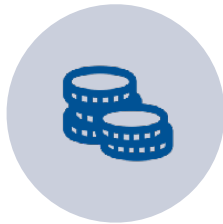
**Filing various
documents**



SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



**ACCOUNTING
FOR FINES,
COURT COSTS**



**INVESTING
MONEY
HANDLED OVER
TO THE COURT**



**CONDUCTING
JUDICIAL
SALES**



**ORIENTING
POTENTIAL
JURORS**



SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



Filing appeals



Filing Orders of Protection



Maintaining/Retaining/Disposing of ALL court records in accordance with the appropriate retention schedules.



Issuing subpoenas



HEATHER DUNCAN'S HELPFUL HINTS FOR BEING A SUCCESSFUL COURT CLERK:

01

Don't make promises you can't keep

02

Don't be afraid to ask stupid questions

03

Trash the "30 year rule"

04

Learn something new everyday

05

Trust the people around you



HEATHER DUNCAN'S HELPFUL HINTS FOR BEING A SUCCESSFUL COURT CLERK:

1

Be respectful to
your judges,
attorneys, court
officers, DA'S,
PD's, etc.

2

Get involved in
your Clerks
Association

3

Develop a
rapport with your
local bar
association

4

Get to know your
local legislators



HEATHER DUNCAN'S HELPFUL HINTS FOR BEING A SUCCESSFUL COURT CLERK:

1

Communicate
,
communicate
,
communicate

2

Delegate,
delegate,
delegate

3

Educate,
educate,
educate

4

Keep up with
new laws and
changes to
existing laws



HEATHER DUNCAN'S HELPFUL HINTS FOR BEING A SUCCESSFUL COURT CLERK:



Keep morale high
in your office



Strive to be the
most professional
Clerks office in
the state



Save money
where you can



Develop a good working
relationship with your county
mayor, county legislative
body and your budget/
finance director



HEATHER DUNCAN'S HELPFUL HINTS FOR BEING A SUCCESSFUL COURT CLERK:

1

Remember where
you came from
and who sent you
here

2

Vow that when you are
no longer eager to
help people or listen
to their problems, you
will seek a new
profession

3

Find a friend in the
Clerks Association or
contact me at (931)
273-1080 and I'll be
yours



HEATHER DUNCAN'S HELPFUL HINTS FOR BEING A SUCCESSFUL COURT CLERK:



GOOD LUCK



RELAX



**ENJOY YOUR FIRST
FEW DAYS**

