


STATE COURT CLERKS

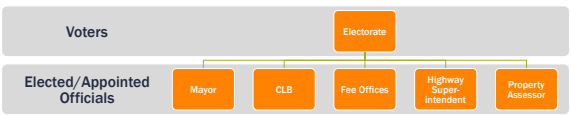
Duties and Responsibilities




08/22/2022 1

1

COUNTY GOVERNMENT STRUCTURE



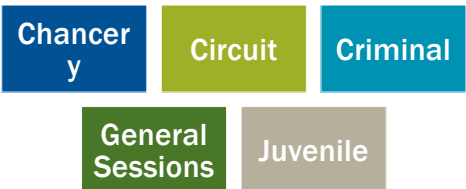
```
graph TD; Voters --> Electorate; Electorate --> Mayor; Electorate --> CLB; Electorate --> FeeOffices[Fee Offices]; Electorate --> HighwaySuperintendent[Highway Superintendent]; Electorate --> PropertyAssessor[Property Assessor];
```




08/22/2022 2

2

CLERKS OF COURT



```
graph TD; Chancery; Circuit; Criminal; GeneralSessions; Juvenile;
```



08/22/2022 3

3

MAINTAINING RULE AND EXECUTION DOCKETS

7

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

INVESTING FUNDS

8

T.C.A. § 18-5-105

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

DELINQUENT TAX SALES

9

T.C.A. § 8-21-401

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

COURT REVENUES

Fines
Court-related Taxes
Fees

Chancery | Circuit | Criminal | General Sessions

UT COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 10

10

CASH JOURNAL

UT COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 11

11

CLERK REVENUES - FEES

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

08/22/2022 12

12

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



13

FORM OF PAYMENT



Checks
Money orders
Credit or debit cards
Online payments

14

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

15

COURT CLERK REVENUES - FEES

16

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



COUNTY REPORTS

17

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.



STATE REPORTS

18



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

FINANCIAL ISSUES EFFECTING STATE COURT CLERKS

COOP 2022




08/22/2022 19

19

LEGAL AUTHORITY

Private Act	General Law
1981/1957 Acts	Charter/ Metro




08/22/2022 20

20

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
--	--




08/22/2022 21

21

22

FEE SYSTEM - AUTHORIZED RESERVE FUNDS

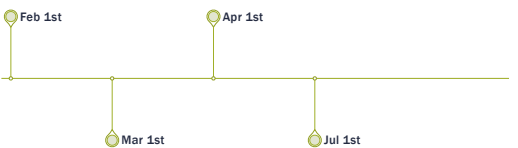
An amount equal to 3 times the monthly salaries of the circuit court clerk, deputies, & assistants



UF | COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 22

23

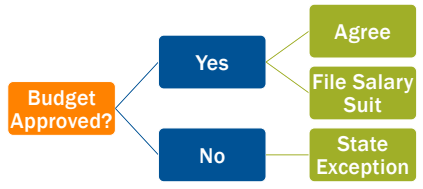
BUDGET TIMELINE



UF | COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 23

24

YOUR BUDGET



UF | COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 24

LETTER OF AGREEMENT/ SALARY SUIT

25

Agree with personnel budget?



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.

YOUR BUDGET - LETTER OF AGREEMENT

26

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

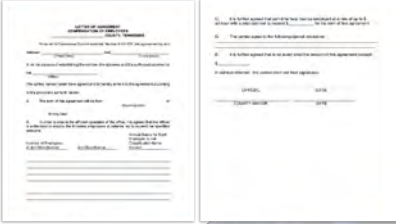


YOUR BUDGET - SALARY SUIT

27



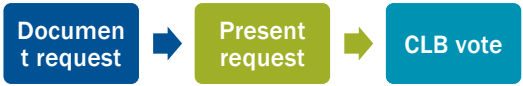
SAMPLE LETTER OF AGREEMENT



UT | COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 28

28

BUDGET AMENDMENTS




UT | COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 29

29

WHAT ARE INTERNAL CONTROLS?

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



UT | COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022

30


31

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.

UF |  COUNTY OFFICIALS ORIENTATION PROGRAM 2022 **Law went into effect June 30, 2016!** 08/22/2022

32

WHY DO COUNTY GOVERNMENTS NEED INTERNAL CONTROLS?

Reduce fraud & waste
Ensure legal, regulatory, & policy compliance
Protect county assets
Promote transparency & accountability

UF |  COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 32

33

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.

UF |  COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 33

34

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.

08/22/2022 34

35

POOR INTERNAL CONTROLS = OPPORTUNITY FOR FRAUD



The Fraud Triangle:
A framework for spotting high-risk fraud situations.

- Pressure:** Financial or emotional factor (e.g., unpaid bills, divorce)
- Opportunity:** Ability to execute plan without being caught
- Rationalization:** Workable justification of observed actions

FRAUD

UF COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 35

36

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

UF COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 36

PURCHASING AUTHORITY

Private Act	General Law
1981/1957 Acts	Charter/Metro

UT COUNTY OFFICIALS ORIENTATION PROGRAM 2022 08/22/2022 40

40

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

08/22/2022 41

41

PURCHASING PROCESS

08/22/2022 42

42



43



44

1

LEGAL ISSUES FOR COURT CLERKS

August 2022



2

COOP 2010



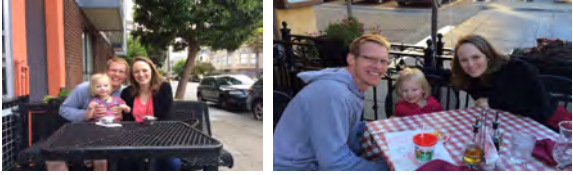
3

COOP 2014



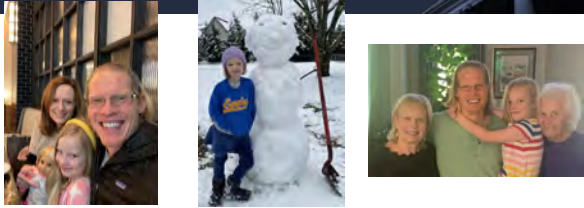
COOP 2018

4



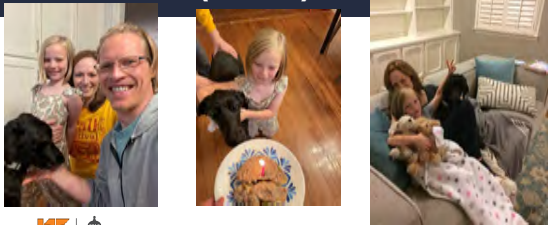
COOP 2022

5



COOP 2022 (CONT.)

6



OBJECTIVES

Requirements to hold and keep holding office

Disposal of court records

Fine/fee/tax collection issues



7

PART ONE

Legal Requirements to Hold and Keep Holding Office



8

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

9

10

TO KEEP HOLDING

**SAVE JOBS
-
BUY LOCAL**

UT

11

TO KEEP HOLDING – CONT.

T.C.A. § 8-48-101:

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

UT

12

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

UT

13

BOND AMOUNTS

Counties with populations of 15,000 or more	Counties with populations of less than 15,000
\$100,000	\$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.

14

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.

15

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



16

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.

17

PART TWO

Disposal of Court Records



18

19

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.

20

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,



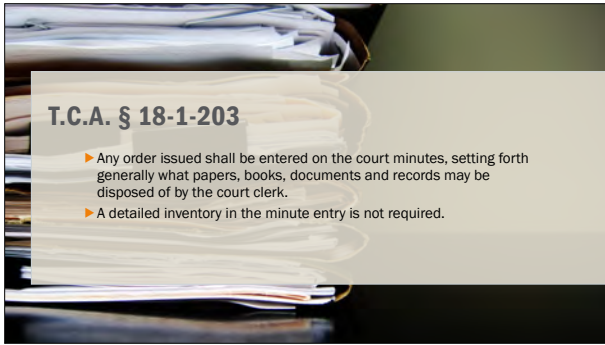
21

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.



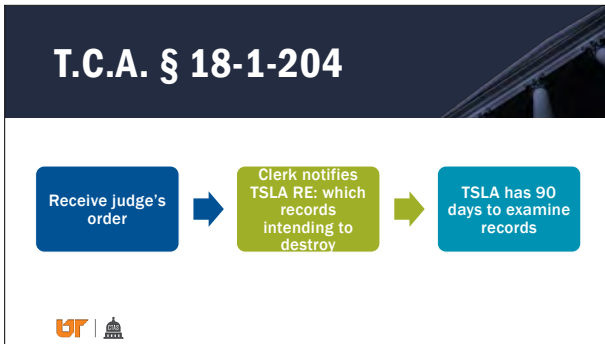
22



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.


23




T.C.A. § 18-1-204

```

graph LR
  A[Receive judge's order] --> B[Clerk notifies TSLA RE: which records intending to destroy]
  B --> C[TSLA has 90 days to examine records]
  
```


UF | 

24



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

UF | 

T.C.A. § 18-1-206

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



25

T.C.A. § 18-1-206

Judge may order the items:

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



26

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.



27

28

FIREARMS

Stolen?	Not stolen?
Returned to rightful owner	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

29

PART THREE

Fine, Fee, and Tax Collection Issues

30

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.



31

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



32

COLLECTION METHODS

Two Primary Statutes:

Criminal Cases
T.C.A. § 40-24-105

Civil Cases T.C.A. §
20-12-144



33

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:



34

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
 - Fail 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



35

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.

36

T.C.A. § 40-24-105(D)

37

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%



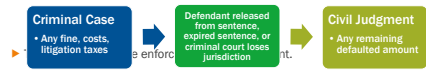
T.C.A. § 40-24-105(E)&(F)

38

▶ 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)

39

▶ 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

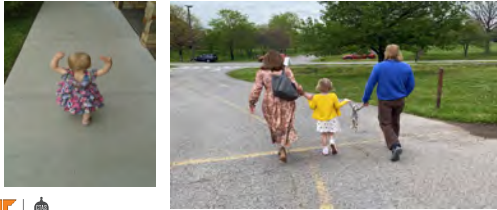
40

- ▶ 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!!

41



OVERVIEW OF OFFICE RESPONSIBILITIES

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



1

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



2

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



3

4

SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



Certifying orders and authenticating judgments

Filing civil petitions

Entering judgments

5

SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



Executing garnishments and levies



Collecting Clerks fees



Providing records searches



Filing various documents



6

SOME OF THE RESPONSIBILITIES OF THE COURT CLERK



ACCOUNTING FOR FINES, COURT COSTS



INVESTING MONEY HANDED OVER TO THE COURT



CONDUCTING JUDICIAL SALES





ORIENTING POTENTIAL JURORS





SOME OF THE RESPONSIBILITIES OF THE COURT CLERK

7

 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:

8

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:

9

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:

10

- 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:

11

- 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:

12

- 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:**

13



GOOD LUCK



RELAX



ENJOY YOUR FIRST
FEW DAYS