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Avoiding Difficulties, Dilemmas, and Disasters

Dear Reader:

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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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Avoiding Difficulties, Dilemmas, and Disasters

Reference Number: CTAS-1300

There are a number of limitations, boundaries, and prohibitions that, if respected, go a long way toward protecting sheriffs and deputies from legal liability, customer hostility, berating judges, indignant attorneys, public embarrassment, unnecessary confusion, and messy courtroom entanglements. Whether the sheriff's office serves 1,000 or 500,000 civil papers each year, it is the mistakes that invariably draw the most attention and are longest remembered. The following list is surely not all encompassing but contains a number of suggestions for avoiding the aforementioned unpleasant sorts of attention.

Keep It Simple

Reference Number: CTAS-1301

Good faith efforts to ensure the integrity of the judicial process in matters not directly related to the sheriff's duties can become a very slippery slope. The sheriff's office may find itself dragged into a quagmire of confusion and controversy among the parties, the clerk's office, or the attorneys. The good news is the sheriff is not responsible for guaranteeing that the system work as it should. Read the process and follow the order to the sheriff contained thereon unless the order is illegal, too ambiguous to understand, or obviously erroneous. In those cases, the attorneys or clerk can be asked for clarification or a corrected order.

The sheriff "*must look alone to the mandate in his hands*. If the judgment awarding such mandate is void, that is a matter to be taken advantage of by the defendant in the execution, and it is no part of the duty of the sheriff to protect [the plaintiff]." *Perdue v. Dodd, et als.*, 69 Tenn. 710 (Tenn. 1878). *See also McCoy v. Dail*, 65 Tenn. 137 (Tenn. 1873); *State, to Use of Josiah Grigsby v. Manly et al.*, 79 Tenn. 636 (Tenn. 1883); and *Shaw v. Holmes*, 51 Tenn. 692 (Tenn. 871). In other words, the sheriff has no dog in the judicial hunt, and "cannot know, nor is it his province to inquire, what arrangements have been made between the principal and his securities."

Levy On Disputed Property

Reference Number: CTAS-1302

There is an important exception to the statutory mandates that a sheriff obey the command of the process virtually without question. When executing a levy, no sheriff is required to seize any property the title of which is disputed, or to sell the same after levy, unless the plaintiff will first give an indemnity bond and security to the officer. The bond then protects the sheriff against all damages and costs in consequence of the levy or sale. T.C.A. § 26-3-104. Protection extends only to disputes based on the claim of a third party and does not include the defendant's objections that the property is exempt from execution, the execution is void, and so forth. *Baker v. Agey*, 21 Tenn. 13 (1840); *Hunter v. Agee*, 24 Tenn. 57 (1844).

The most efficient way to address this issue is for the plaintiff's attorney to sign the indemnity bond, which requires no fee, at the time the levy order is sought. The plaintiff cannot be required to give an indemnity bond in advance. However, if none is given and a dispute over ownership of the property arises when the deputy goes to execute the levy, the deputy should suspend further action until the bond is given.

In the meantime, the judgment debtor may use the delay to remove, transfer, or abscond with the property designated for levy. It is unlikely the sheriff can spare personnel to wait at the scene for a bond to be given that may never actually arrive. The simple form below, adopted from a form used in Chancery Court for Knox County, is found at 16 Tenn. Prac., Debtor-Creditor Law and Practice § 19.04 (2005). The sheriff can perhaps enlist cooperation from the clerk's office to make it easily available to the plaintiff's attorney at the location where the levy order is filed.

INDEMNITY BOND OF PLAINTIFF: T.C.A. § 26-3-104

We, the Attorney for the Judgment Creditor and Surety, indemnify the Sheriff of _____ County, Tennessee, and all the Sheriff's Deputies, and all and every person aiding the Sheriff in the premises, from harm, loss, damages, costs, suits, judgments and executions, that may at any time arise or be brought against the Sheriff or any of them for the levy or sale and that we shall pay any judgment that may be obtained against the Sheriff or any of them by virtue of the levy or sale.

Surety

THIS DAY _____ OF _____, 20____.

Warrantless Searches

Reference Number: CTAS-1303

"The service of civil process does not authorize a warrantless search of private property." *State of Tennessee v. Harris*, 919 S.W.2d 619, 625 (1995). Failing to respect that legal fact invites disaster on two fronts. First, suit may be filed in federal court alleging a violation of civil rights pursuant to 42 U.S.C. §1983. There is no cap on damages in such actions, and attorneys' fees are awarded to the prevailing plaintiff in addition to damages. Second, evidence of criminal conduct discovered under such circumstances is inadmissible in court, allowing the offender to escape prosecution even for serious felony offenses. It is crucial to distinguish civil from criminal procedural rules here, and the ramifications for not doing so can be astonishingly harsh. For that reason, the limits on an officer's authority to enter or remain on the property are examined more comprehensively below.

The parameters are inflexible; the rule of law is that an officer attempting to serve civil process is permitted to go anywhere on the premises a (well behaved) member of the general public might be expected to go and no further. *State v. Marcus Ellis*, No. 01C01-9001-CR 00021, slip op. at 4, 1990 WL 198876, (Tenn. Crim. App., Nashville, Dec. 12, 1990).

The obligation to serve process indisputably gives officers the right to approach a dwelling and knock on the door. After all, the sheriff is required to "go to the house or place of abode of every defendant against whom the sheriff has process, before returning on the same that the defendant is not to be found." T.C.A. § 8-8-201(a)(8). An individual has no expectation of privacy in the area in front of his residence that leads from the street to the front door, and what an officer sees while standing on the sidewalk between the street and door is not protected. *State v. Baker*, 625 S.W.2d 724, 727 (Tenn. Crim. App. 1981).

However, the Fourth Amendment to the United States Constitution and Article I, Section 7, of the Tennessee Constitution protect a citizen of this state from unreasonable searches and seizures of his dwelling and the curtilage that adjoins the dwelling. *State v. Prier*, 725 S.W.2d 667, 671 (Tenn. 1987); *Welch v. State*, 154 Tenn. 60, 289 S.W. 510 (1926).

Therefore, any significant departure from an area where the public is impliedly invited "exceed[s] the scope of the implied invitation and intrude[s] upon a constitutionally protected expectation of privacy." *Id.* (quoting *State v. Seagull*, 95 Wash.2d 898, 632 P.2d 44, 47 (Wash.1981) (en banc)). And, while an officer attempting to serve process does have the right to go to the intended recipient's home or "place of abode," the officer may not enter the home itself without consent. Op. Tenn. Atty. Gen. No. 01-148 (September 24, 2001).

If it is obvious that no one is home, the deputy is at liberty to await the arrival of the residents. The deputy is not authorized to peer in windows or prowl around private, occupied, or fenced property. In *Harris*, the court pointedly stated: "Moreover, nothing in the law justifies the sheriff's proceeding down the lane behind a residence for over a hundred yards to serve civil process even if the sheriff had believed that Harris was 'hiding' from service." *Harris*, 919 S.W.2d at 623. "Consequently, the warrantless search of appellant's property and the resulting seizure of (over 100) marijuana plants was unconstitutional. Any statements made by appellants must likewise be suppressed." *Id.* at 624-625.

Although it may represent the deputy's diligence, or may simply be an innocent effort to determine whether the property is inhabited or abandoned, walking around the exterior of a dwelling or attempting to gaze inside a window constitutes a search, and, "[e]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." *State v. Lakin*, 588 S.W.2d 544, 547 (Tenn. 1979) (quoting *Hester v. United States*, 265 U.S. 57, 44 S.Ct. 445, 68 L.Ed. 898 (1924)). Tennessee courts have consistently held that police entry upon private, occupied, fenced land without a warrant and absent exigent circumstances is unreasonable, and evidence obtained as a result of such a search must be suppressed. *State v. Prier*, 725 S.W.2d 667 (Tenn. 1987).

Never on Sunday

Reference Number: CTAS-1304

The general rule is that civil process shall not be executed on Sunday. The exception to the rule is where it appears the parties to be sued are leaving the county or state or are about to remove themselves or their property beyond the court's jurisdiction. T.C.A. §§ 20-2-104, 105, and 106. Other exceptions are orders of protection, T.C.A. § 36-3-601 *et seq.*, and a few other types of extraordinary process.

No Shopping Allowed

Reference Number: CTAS-1305

No sheriff or deputy may purchase, either directly or indirectly, any property for sale under process of law, *i.e.*, from a sheriff's sale. Any such purchase shall be absolutely void. T.C.A. § 8-8-206. Interestingly enough, the prohibition applies to sheriffs but to no other law enforcement officers or agencies. Additionally, an officer cannot bid at his own execution sale even if the bid is placed purely for the benefit of a third party. *Chambers v. State*, 22 Tenn. 237 (1842).

Service of Process by an Employee of a Party Is Prohibited

Reference Number: CTAS-1306

In any civil action where an officer is a salaried or commissioned employee of a party to the suit and serves a summons, writ, process or other proceeding, said officer commits a Class C misdemeanor. T.C.A. § 8-8-216. Any process served in a civil action in violation of the statute is void. T.C.A. § 8-8-217.

Witnesses and Parties

Reference Number: CTAS-1307

Witnesses and parties to a suit cannot be served with any "writ, process, warrant, order, judgment, or decree in any civil cause" except as to a subpoena to testify as a witness while attending, going, or coming from the place of suit. T.C.A. § 24-2-105; *Hinkle v. Cravens*, 219 Tenn. 253 (1966). The privilege extends to corporate officers who come to testify as a witnesses, and they cannot be served with process in a suit against the corporation. *Sewanee Coal, Coke & Land Co. v. W.W. Williams & Co*, 120 Tenn. 339, 107 S.W.2d 968 (1907) (A resident of another state or county, who has in good faith come to testify as a witness, is exempt from service of process for the commencement of a civil action, either against him in his individual capacity or against a corporation of which he is an officer or agent.).

The travel exemption allows one day for every 30 miles of travel, which illustrates the fact that the privilege has been in effect since 1794. The privilege holds even where the individual has come from a foreign jurisdiction. *Sofge v. Lowe*, 131 Tenn. 626 (1915); *Purnell v. Morton Live Stock Co.*, 156 Tenn. 383 (1928).

Serving a Company

Reference Number: CTAS-1308

When serving a company by certified mail, the letter must be addressed to a specific corporate officer, a managing or general agent, or another agent authorized to receive service of process on the company's behalf. Service cannot be accomplished by merely mailing a copy of the summons and complaint to the company to be received along with the general mail sorted by lower-level employees. *Taylor v. Stanley Works*, 2002 WL 32058966 (E.D. Tenn. 2002); Fed. R. Civ. P. 4(h)(1).

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