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Ex Parte Orders and "Actual Knowledge"

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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Although an ex parte order is effective for only a matter of days, this is often the time during which emotions run high and violence or increased harassment are most likely to erupt. At what point is Respondent deemed to have actual knowledge? If the deputy reads the order to Respondent over the phone, is it in effect? What if the deputy gives oral notice of the order's existence and requirements, but does not have a copy to give Respondent at that time? What is the deputy's duty if, when serving an ex parte order, Petitioner is on the premises, and Respondent refuses to leave?

First, let us look at the issue of "actual knowledge." If the ex parte order has been personally served, Respondent, of course, has actual knowledge. If it has not, Respondent may be deemed to have actual knowledge when he is put on notice of its existence and general requirements by a law enforcement officer.

EXAMPLE: Officer Bob responds to a call and arrives at the scene to find Respondent Bubba duct-taping love notes all over Petitioner Patty's front door. Patty advises Officer Bob she was granted an ex parte order of protection against Bubba, her former boyfriend, two hours earlier. Officer Bob calls his dispatcher and verifies that the judge did indeed issue an ex parte order, which has not yet been served. Officer Bob informs Bubba that the order has been issued and Bubba is to stay away from Patty until the hearing; and directs Bubba to leave the premises. Brimming with *actual knowledge*, Bubba stumbles off into the night to seek solace at his favorite bar.

Two hours later, Officer Bob is again called to Patty's house, and there's Bubba, drawing big red hearts on the vinyl siding. It is his house, and he insists on his right to decorate it. Anyway, no one has given him any piece of paper that says he can't be in his own blankety-blank yard. At this point, Officer Bob arrests Bubba and hauls him away to jail. Of course, Officer Bob could and should have arrested Bubba on the *first* call *if* he had been able to verify the protective order was personally served on Bubba earlier that day.

Some officers are concerned when they serve an ex parte order of protection and realize Petitioner is on the premises. If Respondent has previously assaulted Petitioner, vandalized Petitioner's property, or otherwise threatened or harmed Petitioner, it is foreseeable that Respondent may be at it again by the time the deputy reaches the end of the driveway. The best practice is for the deputy to ensure Respondent is away from the premises before the deputy departs the scene. If, after the order is served, Respondent becomes belligerent or threatening, or refuses to leave, the order is being violated and the duty to arrest arises.

It is a crime and contempt of court to violate an order of protection and Respondent may be found guilty of both. T.C.A. § 36-3-610. Op. Tenn. Atty. Gen. No. 05-183 (December 22, 2005).

A critical change in Tennessee law took effect July 1, 2005. Under the old law, a Respondent arrested for violating the protective order was charged with contempt, a civil offense that carries a penalty of only 10 days in jail and a \$50 fine. At the time of arrest, the magistrate set bond pending the hearing, which was to be conducted within 10 days, and Petitioner was required to appear and show cause why the contempt order should be issued. Of course, if Respondent committed a crime in the process of violating the protective order, *e.g.*, burglary, vandalism, assault, he or she could be prosecuted for that criminal act.

As of July 1, 2005, a knowing violation of a protective order became a crime in and of itself, a Class A misdemeanor carrying a sentence of up to 11 months and 29 days in jail. Furthermore, the new law directs that such a sentence is to be consecutive to any other sentences resulting from the same factual allegations, unless the judge specifically directs otherwise. T.C.A. § 36-3-612(g).

It is important to reiterate that the new criminal penalty applies only to orders of protection issued after a hearing, *not* to ex parte orders. Op. Tenn. Atty. Gen. No. 05-183 (December 22, 2005).

Once Respondent is arrested, the magistrate must consider certain factors and set conditions of release. Upon release, Respondent is given written notice of the conditions, which may include orders to stay away from Petitioner, not to possess or use alcohol, not to possess a firearm or other weapon, or other directives. T.C.A. §40-11-150(a-b). If a law enforcement officer later has probable cause to believe Respondent has violated any condition of release, the officer *shall* arrest Respondent, without a warrant, regardless of whether the officer actually witnessed Respondent committing the violation. T.C.A. §40-7-103(b).

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