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Sheriff's Fees for Service of Process

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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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The sheriff is entitled to collect fees for performing various duties related to serving civil process, and they are specified in T.C.A. § 8-21-901(a)(1). Fees differ depending on factors such as the specific type of process and whether service was completed or merely attempted. It should be noted that the \$2 data processing services fee the sheriff is to collect must be "allocated by the sheriff's county for computerization, information systems and electronic records management costs of the sheriff's office." The funds are to be earmarked within the general fund and reserved for those purposes. T.C.A. § 8-21-901(a)(5)(B).

As of January 1, 2006, Tennessee's court clerks are permitted in many instances to collect costs in the form of a flat fee at the time services are requested. TCA § 8-21-401(a). Unfortunately, the legislature made no similar provisions for county sheriffs, who are not permitted to demand fees in advance, TCA § 8-21-102; § 8-21-901(a), and who, in some instances, are entitled to a fee for each *attempt* at services, as in the case of collecting money to satisfy a judgment under T.C.A. § 8-21-901(a)(2)(B)(i). Op. Tenn. Atty. Gen. No. 02-113 (October 10, 2002). A rare exception to the rule is where the process to be served is coming from another county. T.C.A. § 8-8-202.

Since clerks are charged with collecting and distributing fees, and sheriff's fees cannot be calculated or collected in advance, procedures under the new law may not be as streamlined for the clerks as anticipated.

Clerks maintain records of all sums of money they receive and disburse. TCA § 18-2-101(a). In all cases, the clerk prepares the bill of fees and costs. TCA §§ 8-21-104; 18-1-105(a)(4). Costs are part of the *final judgment* in a case. TCA § 20-12-101; Tenn. R. Civ. Pro. 69; Op. Tenn. Atty. Gen. Nos. 99-003 (January 19, 1999) and 02-072 (June 3, 2002).

Among other responsibilities, the clerk of a trial court is required to collect all costs incident to litigation, including sheriff's fees. Op. Tenn. Atty. Gen. No. 02-072 (June 3, 2002).

Additionally, when selling real or personal property, the clerk must "collect the sheriff's fee, plus the sheriff's fee for each additional defendant in proceedings to sell real estate." TCA § 8-21-401(i)(7). For receiving and paying over all taxes, fines, forfeitures, fees and penalties, the clerk is entitled to commissions that vary between 5 percent and 10 percent. TCA § 8-21-401(h).

The court decides whether to award costs and against whom. However, if costs *are* awarded and any money is received, the sheriff's fee ranks very high on the priority list. In cases where the amount collected is not enough even to pay the whole litigation tax and costs, the state tax should be paid before payment to officers and witnesses. Op. Tenn. Atty. Gen. No 92-10 (February 19, 1992), citing *State v. Stanley*, 71 Tenn. 524, 526 (1879). And in turn, payments of costs to officers of the court take priority over witness fees and other costs. *Id.*, citing *Locke v. McFalls*, 35 Tenn. 674 (1856); Op. Tenn. Atty. Gen. No. 80-286 (June 9, 1980).

Sheriffs may rightfully be concerned that since clerks can now collect their fees "up front" in many cases, there will be little incentive to pursue collection of sheriff's fees beyond one billing. However, motivation may be found in a state law captioned "Liability for Failure to Collect or Account," which holds that court clerks, county trustees, sheriffs and other officers who fail to collect "every fee" that "the county may be entitled to, and which, by the exercise of reasonable diligence could have been collected" is "individually liable to the county for the amount that should have been collected . . ." TCA § 8-22-105.

See Service of Process under Specific Fees Authorized for additional information.

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