



July 22, 2024

Clerks of Court

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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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Clerks of Court

Reference Number: CTAS-75

The Tennessee Constitution in Article VI places the judicial power of the state in one supreme court and in such circuit, chancery and other inferior courts as the legislature creates. The Constitution further provides in Article VI, Section 13, that chancellors appoint the clerk and master for a six-year term and that clerks of other inferior courts are elected for a four-year term. The Tennessee Constitution provides that the clerks of the inferior courts may be chosen on a district or county basis. Many counties have only the circuit court clerk and clerk and master to perform clerking duties for all of the courts held in the county, but others have additional court clerks established by private act or charter, such as general sessions court clerk or juvenile court clerk. In any county in which a separate general sessions clerk is created by private act, the clerk serves in accordance with the private act. T.C.A. § 16-15-301. In counties without a separate general sessions clerk, the circuit clerk usually serves as the general sessions court clerk. T.C.A. § 16-15-301. In most counties, the circuit court has both civil and criminal jurisdiction and uses only one clerk, but some populous counties have a separate criminal court and elected criminal court clerk.

Qualifications-Clerks of Court

Reference Number: CTAS-76

The office of clerks of court does not carry any qualifications beyond the general qualifications for county offices.

Oath of Office and Bond-Clerks of Court

Reference Number: CTAS-77

Court clerks and their deputies must take an oath of office specific to the office of court clerk as well as the constitutional oath. T.C.A. §§ 18-1-103, 18-1-104. Oaths of office are covered under the General Information tab of the County Offices topic.

Bonds are covered under the General Information tab of the County Offices topic. Every clerk must enter into a bond of \$50,000 in counties with a population of less than 15,000 and \$100,000 in counties with a population of 15,000 or more, or the court may require a greater bond. T.C.A. § 18-2-201. After being acknowledged before, approved and certified by the court, the bond must be entered upon the minutes of the court within 30 days and must then be recorded in the office the county register of deeds and transmitted to the county clerk for safekeeping. T.C.A. § 18-2-205. See also T.C.A. § 8-19-103 (Recording of bonds of county officers); T.C.A. § 8-19-115 (Time of filing).

Courts may require their clerks to give bond in such sum as the court may deem sufficient to cover property or funds that may at any time come to the hands of such clerks as special commissioners or receivers. T.C.A. § 18-2-202.

The court may also require special bonds to meet particular exigencies, and in a suitable penalty, whenever, in its judgment, the interest of suitors render it necessary. T.C.A. § 18-2-204.

Compensation-Clerks of Court

Reference Number: CTAS-79

Clerks of court must receive an annual minimum salary in the amount for a general officer as formulated in T.C.A. § 8-24-102. The county legislative body may increase the salary of the general officers above the minimum amount, but may not increase the salary of a court clerk without also increasing the salary of other general officers unless the clerk of court serves more than one court in the county. If the clerk of court serves more than one court in the county, the county legislative body may set additional compensation for such clerk in the amount of 10 percent of the base salary of the clerk of court. The clerk and master is eligible for the additional 10 percent compensation if the clerk and master serves as clerk of the court that exercises probate jurisdiction, regardless of whether the chancellor or some other judge handles probate matters. T.C.A. § 8-24-102(j)(2). The amount due the court clerk as compensation does not vary with the amount of fees or commissions collected regardless of whether the salary of the court clerk is paid from the clerk's fee account or from the general fund.

More information on Compensation can be found under the General Information tab for County Offices.

Deputies and Assistants-Clerks of Court

Reference Number: CTAS-80

The court clerk may receive authority to employ deputies and assistants through a letter of agreement or court order. If the court clerk decides to petition for additional deputies or assistants or additional salary amounts, the petition is filed in the court that the clerk serves, and the county mayor defends the salary suit. T.C.A. § 8-20-101.

Additional information about deputies and assistants is found under the General Information tab for County Offices.

Duties-Clerks of Court

Reference Number: CTAS-81

Clerks serve an important role in the operation of the Tennessee court system, a role that is outlined generally in Title 18 of the Tennessee Code Annotated. Some of the clerks' duties include the following:

1. Attending each court session with all the papers for the cases on the docket;
2. Administering oaths to parties and witnesses who testify;
3. Keeping minutes of the court in a well-bound book or in an electronic format so long as certain rules relating to the safekeeping of the records are followed;
4. Maintaining the rule docket and an execution docket in which all court judgments or decrees are entered in order of rendition and all receipts and disbursements in a case are entered;
5. Maintaining indexes for all books and dockets that are kept by the office; and
6. Investing funds pursuant to T.C.A. § 18-5-105.

T.C.A. §§ 18-5-102, 18-1-105.

The clerk must reside in the county where the court is held and maintain an office in the county seat. T.C.A. § 18-1-102.

General sessions clerks have duties similar to other court clerks:

1. Retaining, preserving, and filing in order all papers in civil cases;
2. Transmitting papers when an appeal has been taken to circuit court; and
3. Keeping in a well-bound book a docket of all judgments and executions, or storing such information in an electronic format in accordance with rules for the safekeeping of these records.

T.C.A. § 16-15-303.

Because court clerks deal with voluminous paperwork, the storage and retention of documents are important aspects of these offices, and it is extremely important that the records of the clerk's office be well organized and accurate. Clerks collect state and county litigation taxes, criminal injuries compensation tax in courts with criminal jurisdiction, county expense fees, and depending upon the particular court, funds for the impaired driver's trust fund, Tennessee Bureau of Investigation fees, misdemeanor jail per diems, fines, sheriff's fees, clerk's fees, witness fees and other items of court costs. Clerks prepare bills of costs in cases, account for these monies and make collection efforts when these amounts are unpaid. Clerks maintain a cash journal (general ledger) to account for and summarize the cash transactions of the office and issue receipts for all collections.

Clerks invest idle funds according to T.C.A. § 8-21-401, and often serve in a fiduciary capacity to invest funds held for third parties. Additionally, clerks and masters conduct delinquent tax sales, and clerks more generally may conduct sales of property ordered by the court. Clerks, depending upon the particular court, may collect support, including alimony and child support, pursuant to court order and the general law although the responsibility for collecting support in many cases has been transferred to a central state collecting agency. It is the official duty of each clerk of court to attend meetings of the state court clerks' conference unless the clerk is otherwise officially engaged or is unable to attend for good and sufficient reasons. T.C.A. § 18-1-501 *et seq.*

Relationship to County Legislative Body and Other Officials-Clerks of Court

Reference Number: CTAS-82

The court clerk must interact with the county mayor and/or a finance/budget director as well as the

county legislative body regarding the clerk's budget and budget amendments. The exact procedures vary from county to county depending upon whether the county operates under a charter or optional general law regarding budgeting, or has a private act dealing with this subject. However, all court clerks must submit budget requests in a timely manner in the first half of each calendar year for inclusion in the county's annual budget. Most counties have budget committees that may recommend appropriations for the clerk's budget that differ from those submitted by the court clerk. The county legislative body determines the amount of the clerk's budget, subject to certain restrictions, such as following the requirements of any court order regarding a salary suit for deputies or assistants. In many counties, depending upon the applicable law, the county mayor has the authority to approve line item amendments to the clerk's budget within major categories not affecting personnel, whereas major category amendments require the approval of the county legislative body. T.C.A. § 5-9-407.

Of course the clerks have a close working relationship with the judges or chancellors of the courts they serve. A good working relationship between judge and clerk is vital to the efficient operation of the courts. Court clerks also interact regularly with the office of sheriff and collect sheriff's fees as part of the bill of costs. Process directed to the sheriff is returned by the sheriff or deputy to the court clerk. The sheriff executes on property in proper cases and returns funds to the clerk to allocate according to law. If a county has constables who serve process, the court clerk may also interact with these officials in the performance of their duties.

All clerks interact with the trustee in the regular remittance of fees and local litigation taxes. Clerks and masters interact with the trustee and the delinquent tax attorney regarding collections of delinquent property taxes and tax sales.

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