S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243

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Opinion No. 00-009

Actions of Court Officers

QUESTIONS

1. What is the authority of the court officers of the Hamilton County Chancery Court and the Hamilton County Circuit Court, at the direction of the court or not, to detain or confine litigants or others:

(i) inside the courtroom;
(ii) outside the courtroom but inside the courthouse;
(iii) outside the courthouse where they have come from the courtroom; or
(iv) outside the courthouse?

2. What liability would the judge of the circuit court or the chancery court, or the court officer, have in discharging such activities?

3. Are these court officers authorized to bear arms in or outside the courthouse?

OPINIONS

1. The judge would be authorized to direct court officers, as well as sheriff's personnel, to take actions to maintain order within the court and to promote the efficient operation of the courts. The duties and authority of a court officer given by a judge should also be consistent with general statutes according the sheriff the duty to maintain courthouse security. Whether any particular action, either at the court's direction or not, falls within this authority would depend on the facts and circumstances. Whether any of the actions listed in Question 1 would be authorized would depend upon the specific facts and circumstances.

2. The doctrine of judicial immunity bars civil actions for money damages against state trial court judges for acts committed in their judicial capacity. The only exceptions are for acts committed in clear absence of jurisdiction or outside the judge's judicial capacity. Whether this immunity applies depends on the facts and circumstances, particularly whether the act is judicial in nature. Qualified immunity would also apply for actions outside the judge's judicial capacity. Under this doctrine, government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Court officers acting at the direction of a judge may also, depending on the facts and circumstances, be accorded derived judicial immunity. A court officer would also be entitled to qualified immunity for other discretionary functions not performed at the judge's direction.

3. We have found no statute or local rule expressly authorizing court officers in Hamilton County to bear arms. It appears that a judge could authorize a court officer to carry arms as a part of the judge's inherent authority. In that event, however, the court exercising the power must establish reasonable necessity by clear, cogent, and convincing proof. A reviewing court could also conclude that such officer must obtain a permit to carry a weapon under Tenn. Code Ann. § 39-17-1351.

ANALYSIS

1. Authority of Court Officers of Hamilton County Chancery and Circuit Courts

This opinion addresses the authority of court officers of Hamilton County Chancery Court and Hamilton County Circuit Court. The judges of these courts are expressly authorized by private act to appoint court officers. 1929 Tenn. Priv. Acts ch. 10, § 10; 1959 Tenn. Priv. Acts ch. 256, § 8; and 1941 Tenn. Priv. Acts ch. 156, § 16 (expressly authorizing the County Council to "authorize the employment and fix the salaries of such court officers as may be required in the efficient operation of the courts of the County[,]" such officers to be named by the judges). In an earlier opinion, this Office concluded that these individuals are not special deputies who must be appointed by the sheriff under Tenn. Code Ann. § 8-8-212. Op. Tenn. Atty. Gen. 99-167 (August 26, 1999).

The request also asks a series of questions regarding the authority of court officers appointed by the judges under these acts and possible liability for their actions. We have found no statute, either public or private, expressly outlining the authority of court officers, nor are there any local rules of these courts on this subject. The authority of officers named by the judges must also be viewed within the general statutory framework of courthouse security. Statutes of general applicability entrust the county courthouse and court security to the sheriff. Tenn. Code Ann. § 5-7-108 (the sheriff, or other person appointed by the legislative body, "shall prevent trespasses, exclude intruders, and keep [the courthouse] and the grounds attached thereto in order . . ."); Tenn. Code Ann.§ 8-8-201(2)(A) ("[i]t is the sheriff's duty to: . . . attend upon all the courts held in the county when in session; cause the courthouse or courtroom to be kept in order for the accommodation of the courts; furnish them with fire and water; and obey the lawful orders and directions of the court.") At the same time, the private acts cited above expressly authorize Hamilton County circuit and chancery court judges to name officers as required "for the efficient operation of the courts."

In addition, irrespective of specific grant by the constitution or legislation, judges have inherent powers included within the scope of a court's jurisdiction. Inherent power is that power essential to the existence, dignity, and functions of a court from the very fact that it is a court. *Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit,* 579 S.W.2d 875, 878 (Tenn.Ct.App. 1978). But, because the invocation of inherent powers can interfere with the legitimate constitutional prerogatives of the other branches of government, courts reviewing

exercises of these powers are sensitive to the encroachment on county legislative bodies over such matters. Thus, in Tennessee, the use of inherent powers is limited by the requirement that the court asserting the power must establish reasonable necessity by clear, cogent, and convincing proof. *Anderson County*, 579 S.W.2d at 881. This Office addressed the general issue of courthouse security in Op. Tenn. Atty. Gen. 97-117 (September 2, 1997) (copy attached).

Question 1 is whether court officers may, at the court's direction or on their own initiative, detain litigants or others in the courtroom, the courthouse, or outside the courthouse. Courts recognize that inherent judicial authority includes the authority to maintain order within the court and take other measures to promote the efficient administration of justice. Thus, the judge would be authorized to direct court officers to take actions to maintain order within the court and to promote the efficient administration of justice. *See, e.g., Mireles v. Waco,* 502 U.S. 9, 112 S.Ct. 286, 116 L.Ed.2d 9 (1991) (a judge was authorized to order police officers to bring an attorney in the courthouse into his court). Whether any particular action falls within this authority would depend on the facts and circumstances. In addition, these court officers could, on their own authority, take appropriate measures to maintain order within the court and promote the efficient administration of justice. But the duties and authority of a court officer given by a judge or exercised on his or her own authority should also be consistent with general statutes according the sheriff the duty to maintain courthouse security. As discussed above, sheriff's personnel are required by statute to obey the lawful orders and directions of the court. Whether any particular action, either at the court 's direction or not, falls within the authority of the judge or the court officer would depend on the facts and circumstances.

2. Liability for Actions of Court Officers

Question 2 is to what extent the judge may be liable for any of these actions by court officers. Generally, judges of courts of general jurisdiction are not liable in a civil action for damages for their judicial acts, even when such acts are in excess of their jurisdiction or are alleged to have been done maliciously or corruptly, unless the act is in clear absence of all jurisdiction. *Mireles v. Waco, supra; Bradley v. Fisher*, 80 U.S. 335, 20 L.Ed. 646 (1871); *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978), *rehearing denied* 436 U.S. 951, 98 S.Ct. 2862 (1978). Tennessee courts recognize the doctrine of judicial immunity. *Graham v. Dodson*, 830 S.W.2d 70, 71 (Tenn.Ct.App. 1991), *app. denied* (1992).

The relevant inquiry in determining whether a judge's actions were taken in his or her "judicial capacity," so as to entitle the judge to judicial immunity from suit, is the nature and function of act, not the act itself. *Mireles, supra.* Thus, in making this determination, the court looks to the particular act's relation to general functions normally performed by a judge. *Id.* A judge acts in a judicial capacity when exercising control of the judge's courtroom. *Sheppard v. Maxwell,* 384 U.S. 333, 358, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). Whether this immunity applies to any of the actions referred to in Question 1 depends on the facts and circumstances, particularly whether the act is judicial in nature.

Depending on the facts and circumstances, court officers acting under the direction of a judge may also be accorded derived judicial immunity. *See, e.g., City of Houston v. Swindall,* 960 S.W.2d

413 (Tex.Ct.App. 1998) (court data terminal operator). In deciding whether to accord derived judicial immunity, courts apply a functional approach and determine whether the activities of the party invoking immunity are intimately associated with the judicial process, or whether the party is functioning as an integral part of the judicial system or as an "arm of the court," and the court determines whether the act is judicial in nature by its character, not by the character of the agent performing it. *Imbler v. Pachtman*, 424 U.S. 409, 430-31, 96 S.Ct. 984, 994-95, 47 L.Ed.2d 128 (1976); *Briscoe v. LaHue*, 460 U.S. 325, 335, 103 S.Ct. 1108, 1115-16, 75 L.Ed.2d 96 (1983).

Qualified immunity would also apply for actions outside the judge's judicial capacity. Under the doctrine of qualified immunity, government officials "performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). This doctrine would also apply to nonjudicial actions of a court officer at the direction of the judge, or to actions of a court officer within that individual's scope of authority, even if not performed at the judge's express direction.

3. Authority of Court Officers to Carry Arms

Your last question is whether court officers are authorized to bear arms in or outside the courtroom. We have found no statute or local rule expressly authorizing court officers in Hamilton County to bear arms. State statutes appear to recognize that this authority exists. For example, the statute making it an offense to carry a weapon during judicial proceedings does not apply to anyone in the actual discharge of his official duties as a law enforcement officer *or as a court officer* who has responsibility for protecting persons or property or providing security. Tenn. Code Ann. § 39-17-1306(c). Under Tenn. Code Ann. § 39-17-1315, any law enforcement officer, police officer, bonded and sworn deputy sheriff, director, commissioner, or retired law enforcement officer who meets certain requirements may carry a handgun at all times pursuant to a written directive by the executive supervisor of the organization to which the person is or was attached or employed. This Office has concluded, however, that this provision contemplates issuance of a written directive by a law enforcement agency to which an officer is attached. Op. Tenn. Atty. Gen. 92-18 (February 28, 1992).

It appears that a judge could authorize a court officer to carry arms as a part of the judge's inherent authority. In that event, however, the court exercising the power must establish reasonable necessity by clear, cogent, and convincing proof. A reviewing court could also conclude that such officer must obtain a permit to carry a weapon under Tenn. Code Ann. § 39-17-1351.

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