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Opinion No. 00-120

Judicial Commissioners' Authority to Issue *Ex Parte* Orders of Protection

QUESTION

What is the meaning of the phrase "is not available" in Tenn. Code Ann. § 36-3-601(3)(D) which provides that magistrates, judicial commissioners and other officials with the authority to issue an arrest warrant in the absence of a judge can issue an *ex parte* order of protection when a judge "is not available?"

OPINION

It is the opinion of this office that a judge "is not available" when the judge cannot carry out the duties of his office due to illness, disability or other cause, when the judge is away from his or her office or when the judge is engaged in the performance of other judicial duties such that he or she would not be able to address the application for an order of protection within a reasonable amount of time.

ANALYSIS

Your opinion request asks this office to clarify the use of the phrase "is not available" as that phrase is used in Tenn. Code Ann. § 36-3-601(3)(D). Tenn. Code Ann. § 36-3-601(3)(D) states as follows:

"Court" also includes judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant in the absence of a judge for purposes of issuing *ex parte* orders of protection when a judge of one of the courts listed in subdivisions (3)(A), (B), or (C) is not available.

In turn, Tenn. Code Ann. § 36-3-605 (a) authorizes a court to immediately and for good cause shown issue an *ex parte* order of protection. When read together, Tenn. Code Ann. § 36-3-601(3)(D) and § 36-3-605 allow judicial commissioners and other magistrates to issue *ex parte* orders of protection

when a judge is not available.

When construing a statute, courts begin with the proposition that the language of the statute should be given its natural and ordinary meaning. *Wayne County v. Tennessee Solid Waste Disposal Board*, 756 S.W.2d 274 (Tenn. Ct. App. 1988); *City of Lenoir City v. State*, 571 S.W.2d 297 (Tenn. 1978). Consequently, the phrase “is not available” should be given its natural and ordinary meaning.

The common dictionary definition of “available” is “accessible free use; at hand.” *Webster’s II New College Dictionary*, 77 (1995).

Thus, a judge “is not available” for purposes of Tenn. Code Ann. § 36-3-601(3)(D) when he or she is not “at hand” to consider an application for an *ex parte* order of protection. Such unavailability would arise in extraordinary circumstances such as death or illness as well as in more common situations such as the judge’s absence from his or her office or inability to consider an application for an *ex parte* order of protection within a reasonable period of time because occupied in the performance of other judicial responsibilities.

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