S T A T E O F T E N N E S S E E
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Opinion No. 01-027

Judicial Commissioners' Authority to Issue Extended Orders of Protection

QUESTION

May a judicial commissioner or a magistrate conduct a hearing for an order of protection pursuant to Tenn. Code Ann. § 36-3-605(b) and issue an extended order of protection?

OPINION

It is the opinion of this office that judicial commissioners, magistrates or other officials with the authority to issue an arrest warrant may not conduct a hearing or issue an extended order of protection.

ANALYSIS

As previously discussed in Op. Tenn. Atty. Gen. 00-120 (July 17, 2000), Tenn. Code Ann. § 36-3-601(3)(D) and § 36-3-605(a) allow judicial commissioners, magistrates and other officials with the authority to issue an arrest warrant to issue *ex parte* orders of protection when a judge is not available. However, by the explicit language of the statute that authority does not extend to hearings for extended orders of protection. Tenn. Code Ann. § 36-3-601 states in pertinent part:

> "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 subdivision (3)(A), (B) or (C) is not available.

Tenn. Code Ann. § 36-3-601(3)(D)(emphasis added).

Tenn. Code Ann. § 36-3-605(a) allows a court to issue an *ex parte* order of protection upon a showing of an immediate and present danger of domestic abuse. Tenn. Code Ann. § 36-3-605(b) and (c) go on to establish the procedure whereby the court holds a hearing within 15 days to determine whether

the *ex parte* order of protection should continue or be dissolved. Tenn. Code Ann. § 36-3-605(c) explicitly provides that a copy of the petition and notice of the hearing be served upon the respondent. It is clear that all parties are expected to be present for the hearing, therefore, it is not an *ex parte* proceeding. Because Tenn. Code Ann. § 36-3-601(3)(D) limits the authority of a judicial commissioner or magistrate to "issuing *ex parte* order of protection," a judicial commissioner or magistrate does not have the authority to conduct a hearing pursuant to Tenn. Code Ann. § 36-3-605(b) and extend an *ex parte* order of protection.

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