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Opinion No. 02-075

Authority of criminal court clerks and availability of records

QUESTIONS

1. May a criminal court clerk allow pleadings and exhibits to leave the courthouse in possession of the judge, the parties and third parties?

2. Are official court files available to the parties and the public during regular courthouse hours absent a written court order directing otherwise?

3. Are documentary exhibits sealed from the public available to the parties in the clerk's office during regular hours?

OPINIONS

1. A court may authorize that pleadings and exhibits be withdrawn. Third parties may not withdraw official court files.

2. The general public has a right to access court files as public documents, subject to the discretion of the trial court and clerk.

3. Upon order of the court, documents sealed from the public are available to the parties in the clerk's office and are generally discoverable under Rule 16.

ANALYSIS

1. Propriety of withdrawing court files from the clerk's office.

A court exercises dominion and control over its own files. The United States Supreme Court has stated that "every court has supervisory power over its own records and files." *Nixon v. Warner Communications*, 435 U.S. 589, 98 S. Ct. 1306 (1978); *see In Re Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470, 473 (6th Cir. 1983). The Tennessee Court of Criminal Appeals has similarly observed that

"a trial court has the inherent authority to determine the custody and control of evidence held in the clerk's office." *Ray v. State*, 984 S.W.2d 236, 238 (Tenn. Crim. App. 1997). The disposition of court files is generally a matter addressed by court rule.

The local rules of Anderson County Court provide: "All papers and records of the court shall be in the custody of the clerk. Files may be withdrawn only by counsel of record at any time with permission of the clerk or judge." Anderson County Ct. R. 105. The rule contains no requirement that the party obtain a written court order. The rule further authorizes the clerk to establish procedures "as necessary to observe this rule and for the purposes of preserving the record with appropriate court order." Anderson County Ct. R. 105. Because the clerk in Anderson County is authorized to effectuate this rule, the specific procedure is subject to the discretion of the clerk and court.

The rule limits this privilege exclusively to "counsel of record." Anderson County Ct. R. 105. Thus, the general public may not withdraw files from the clerk's office.

2. Public's right to examine official court files.

Court files are public records and thus, accessible to the public absent a court order prohibiting otherwise. "Public records" are defined to include "[t]he pleadings, documents, and other papers filed with the clerks of all courts." Tenn. Code Ann. § 10-7-403(2)(1997 & Supp. 2001); *In Re Knoxville News-Sentinel Co., Inc.*, 723 F.2d at 475. The public possesses a qualified right rooted in common law and the First Amendment to examine documents generated by and pertaining to judicial proceedings. *Ballard v. Herzke*, 924 S.W.2d 652, 661-2 (Tenn. 1996). Thus, there is a "strong presumption that court files will be open to the public." *Smith v. Securities and Exchange Commission*, 129 F.3d 356, 359 (6th Cir. 1997).

Without a court directive inhibiting access to particular files, the interests of the court in controlling its own records and the general public in examining court documents are not competing. As a matter of statutory law, the Tennessee Public Records Act mandates that "[a]ll state, county and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by State law." Tenn. Code Ann. § 10-7-503(a)(1997 & Supp. 2001). This right, though, is subject to the trial court's discretion on a particular matter. *Ray*, 984 S.W.2d at 238. Rule 105 of the Anderson County rules contains no conflicting prohibitions. Anderson County Ct. R. 105.

3. Availability to the parties of documents under seal from the public.

Once sealed, documents become inaccessible to the general public but remain open to the parties. In its discretion, a court may place items under seal pursuant to its authority over its own files. *Ray*, 984 S.W.2d at 238. Once placed under seal, the item is confidential and free from public scrutiny under the Public Records Act. *Knoxville News-Sentinel v. Huskey*, 982 S.W.2d 359, 362 (Tenn. Crim. App.

1998).

But a court's authority to seal a record is not absolute. *Smith*, 129 F.3d at 359. A court may seal its records only when "interests of privacy outweigh the public's right to know." *In Re Knoxville News-Sentinel*, 723 F.2d at 474; *Ballard*, 924 S.W.2d at 660.

Documents sealed from the public may remain accessible to the parties, upon order of the court. The availability of sealed documents to the parties does not implicate the public's "right to know," nor does it appreciably intrude upon the "interests of privacy." *In Re Knoxville News-Sentinel*, 723 F.2d at 474. Granting the parties access does not affect the confidentiality of the document. *Huskey*, 982 S.W.2d at 362. Further, the parties possess a compelling interest in accessing the files in order to prepare for trial. Securing the document from the reach of the Public Records Act is inconsequential for the purposes of the parties. The authority of the parties to access the files does not stem from the Public Records Act; rather, in most cases the documents would be discoverable under Rule 16. Tenn. R. Crim. P. 16(2001).

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