S T A T E O F T E N N E S S E E
OFFICE OF THE
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Opinion No. 03-145

Reissuance of service of process

QUESTION

Since terms of court have been abolished in Tennessee, does unserved process, i.e., a capias, have to be reissued on a periodic basis and, if not, when does it have to be reissued?

OPINION

It is the opinion of this office that an unexecuted capias does not have to be reissued as long as an indictment is pending, unless the capias has been cancelled.

ANALYSIS

Tenn. R. Crim. P. 9(c) and (d) read as follows:

> (c) Execution; Return. The capias and criminal summons shall be executed and served as provided in Rule 4(d). The peace officer executing a capias shall make return thereof to the court. At the request of the district attorney general any unexecuted capias shall be returned and cancelled.
>
> (d) Reissuance. At the request of the district attorney general made at any time while the indictment is pending, or upon its own initiative, the court may direct the clerk to deliver to the sheriff or other authorized person for execution or service a capias returned unexecuted and not cancelled or a criminal summons returned unanswered or a duplicate of either.

It is the opinion of this office that under Tenn. R. Crim. P.9(d), the district attorney general or the trial court, upon its own initiative, may direct reissuance of a capias at any time while an indictment is pending.

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Requested by:

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