

# The Recorder

The Journal of Texas Municipal Courts

Volume 24

February 2015

No. 2

© 2015 Texas Municipal Courts Education Center. Funded by a grant from the Texas Court of Criminal Appeals.

## THE FAIR DEFENSE ACT AND THE ROLE OF THE MAGISTRATE

By Jim Bethke, Executive Director, Texas Indigent Defense Commission and Dottie Carmichael, Ph.D., Research Scientist, Public Policy Research Institute (PPRI), Institute at Texas A&M University. A special thank you is owed Brittany Long, 3L, University of Texas School of Law for her editorial assistance.

### Introduction

In 2005, there were a series of articles published in *The Recorder* describing magistrates' responsibilities under the Fair Defense Act passed in 2001. Since then, the Texas Legislature has met four times and convened once again on January 13. Additionally, the U.S. Supreme Court issued an opinion directly impacting Article 15.17 hearings, as has the Texas Court of Criminal Appeals. This article is intended to serve as a refresher and highlight key changes since the last publication.

### Overview of the Fair Defense Act of 2001

The Fair Defense Act, the original blueprint for indigent defense developed by the Texas Legislature, provides necessary structure and guidance to local officials carrying out constitutional responsibilities to ensure that all defendants have access to counsel.

Texas Code of Criminal Procedure, Article 1.051(c), provides that "an indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation."<sup>1</sup> In 2001, the 77<sup>th</sup> Texas Legislature modified the State's statutes and codes to reform indigent defense practices through a group of amendments collectively known as "The Fair Defense Act." Prior to the Fair Defense Act, an absence of uniform standards and procedures combined with a lack of State oversight allowed indigent defense rules and the quality of representation to vary widely from county to county and even from courtroom to courtroom.<sup>2</sup> The accused in Texas were not uniformly assured prompt access to counsel. Furthermore, since the State did not provide funding for indigent defense, the entire financial burden was shouldered by counties. By changing the procedures for conducting magistrate hearings, determining indigence, and appointing counsel, the legislation addressed practices that had been under scrutiny both from inside and outside the state.<sup>3</sup>

*Fair Defense Act continued on pg. 22*

### Inside This Issue

#### Features:

Blinded by the Light: The Enforcement of Outdoor Municipal Lighting Ordinances in Texas .....	15
Examples of Improper Judicial Conduct.....	8
The Fair Defense Act .....	1
New Municipal Judges Continue to be Supported by TMCEC Mentor Program.....	21
Transportation Network Companies: Litigation, Livelihood, and Local Regulations .....	4

#### Notices/Information:

Around the State .....	2
Clinic Registration .....	32
DRSR: What to Keep in Your Vehicle .....	33
Eithics Update.....	8
From the Center .....	31
Registration Forms.....	36
Resources for Your Court.....	26
Traffic Safety News .....	33

## Texas Municipal Courts Education Center

2210 Hancock Drive  
Austin, Texas 78756  
512.320.8274 or 800.252.3718  
Fax: 512.435.6118  
www.tmcec.com

*Fair and Impartial Justice for All*

### FY15 TMCEC Officers

President: Kathleen Person, Temple  
President-Elect: Edward Spillane, College Station  
1st V.P.: Sharon Hatten, Midland  
2nd V.P.: Robin A. Ramsay, Denton  
Secretary: Hilda Cuthbertson, Bryan  
Treasurer: Robert C. Richter, Missouri City  
Past-President: Julie Escalante, Baytown

### Directors

Gary Bellair, Ransom Canyon • Danny Rodgers, Fort Worth • Michael Acuna, Dallas  
Phyllis Rogers, Sulphur Springs • David L. Garza, Bee Cave • John Bull, San Antonio  
• Donna Starkey, Alvin • Esmeralda Garcia, Houston • Connie Rodriguez, McAllen

### Staff

- Hope Lochridge, Executive Director
- Ryan Kellus Turner, General Counsel & Director of Education
- Mark Goodner, Program Attorney & Deputy Counsel
- Robby Chapman, Program Director
- Regan Metteauer, Program Attorney
- Deadra Stark, Administrative Director
- Patty Thamez, Program Coordinator & Network Administrator
- Tessa Madison, Program Coordinator
- Edward Minevitz, TxDOT Grants Administrator & Program Attorney
- Pat Ek, Registration Coordinator
- Jacob Stone, Multi-Media Specialist
- Crystal Ferguson, Research Assistant & Office Manager
- Avani Bhansali, Administrative Assistant
- Chris Clontz, Communications Assistant

Published by the Texas Municipal Courts Education Center through a grant from the Texas Court of Criminal Appeals. An annual subscription is available for \$35.

Articles and items of interest not otherwise copyrighted may be reprinted with attribution as follows: "Reprinted from *The Recorder: The Journal of Texas Municipal Courts* with permission from the Texas Municipal Courts Education Center."

The views expressed are solely those of the authors and are not necessarily those of the TMCEC Board of Directors or of TMCEC staff members.



## AROUND THE STATE

### Mark your Calendars: Interesting Training Opportunities

- *NACM Annual Meeting* – February 8-10, 2015, Bastrop Lost Pines Resort
- *NHTSA Lifesavers* – March 15-17, 2015, Chicago Hyatt Regency
- *TMCEC Traffic Safety Conference* – March 29-31, 2015, Austin Omni Southpark
- *Impaired Driving Forum* – July 27-28, 2015, Austin Omni Southpark (judges only)
- *TMCA Annual Meeting & Education Program* – July 30-August 1, 2015, Corpus Christi Omni

### Irving Municipal Court Hosts Multi-Media Show at Universal Academy

Under the leadership of Judge Rodney Adams and Judge Laura Andersen, the Irving Municipal Court partnered with TMCEC to host the multi-media show, *Be the One*, on December 18th at a local charter school, Universal Academy. Judge Adams introduced the program, telling students "We care about you. We want you to succeed." Approximately 90 students watched the dynamic three-screen video presentation that takes clips out of current movies to emphasize the importance of leadership and driving safety.

From the producer of the *Be The One* video, Motivational Multimedia Assemblies (MMA): "The world is in need of new thinkers, collaborators and leaders. We need people who know how to work together and produce far greater results. But, to be that kind of person these days, you need an incredible sense of responsibility and character. Too often, for too many people, it's 'all about me.' You can be someone who puts others first, who puts the whole community first. Think "what will move everyone forward?" For more information about MMA, go to <http://www.motivationalmedia.org/>.

TMCEC is seeking three other municipal courts to sponsor the program locally in 2015. If you are interested, please contact Ned Minevitz at [ned@tmcec.com](mailto:ned@tmcec.com). Funding for the program is provided by a grant from TxDOT. The program is designed for middle and high school students.



# FROM THE GENERAL COUNSEL

## TEXAS MAGISTRATES SHOULD ANTICIPATE MORE REQUESTS FOR “BLOOD WARRANTS” IN LIGHT OF COURT OF CRIMINAL APPEALS DECISION IN *VILLARREAL*

Ryan Kellus Turner

General Counsel and Director of Education, TMCEC

A nonconsensual search of blood of a DWI suspect, conducted pursuant to the mandatory blood draw and implied consent provisions in the Transportation Code, violates the 4th Amendment, when undertaken in the absence of a warrant. In a 5-4 decision, this is the holding of the Texas Court of Criminal Appeals in *State v. Villarreal*, 2014 Tex. Crim. App. LEXIS 1898 (November 26, 2014).

In an opinion that fastidiously addresses the State’s contentions, Judge Alcalá, joined by Judge Price, Judge Womack, Judge Johnson, and Judge Cochran, opine that it is unconstitutional to perform a blood draw on a driver under the Transportation Code’s mandatory blood draw and implied consent provisions when there is no warrant to draw the blood and the driver has explicitly stated he does not consent to the draw. A blood draw is a search (not a seizure) and the applicable implied consent statutes do not create an irrevocable consent that would function as an exception to the warrant requirement of the 4th Amendment. Similarly, the Court declined to extend the automobile exception, the special-needs exception, or the search incident to arrest exception to encompass warrantless blood draws.

There are two dissenting opinions in *Villarreal*. (Judge Keasler dissented without a written opinion.) Presiding Judge Keller, joined by Judge Hervey, dissented, opining that in light of the totality of the circumstances, recent U.S. Supreme Court decisions authorizing irrevocable consent in regards to probationers, and recent case law authorizing the warrantless taking of non-invasive DNA samples from arrestees, the warrantless blood draw of a person who has had two DWI convictions is not unreasonable. Judge Meyers dissented separately opining that Sections 724.012(b)(3)(B) should be upheld as an exception to the warrant requirement because the search is not an unreasonable one and because the statute provides individuals notice of the circumstances where they may be subject to a warrantless search.

In *Missouri v. McNeely*, 133 S.Ct. 1552 (2013), the U.S. Supreme Court held that natural metabolism of alcohol does not present a per se exception to the 4th

Amendment’s warrant requirement for nonconsensual blood testing. In the November 2014 issue of *The Recorder*, Regan Metteauer and I wrote a chronology of *Missouri v. McNeely*-related case law in Texas. While *McNeely* did not expressly strike down state implied consent laws, a number of intermediate court of appeals decisions put a cloud of doubt over the constitutionality of Texas implied consent laws (Chapter 724, Transportation Code).

In November, we stated that two things appeared certain. One of which was that the Court of Criminal Appeals, and/or the Legislature, would have to reconcile “loose ends” in Texas law stemming from *McNeely*. What, if anything, the Legislature may do in the 84th Regular Session remains to be seen. The Court’s opinion in *Villarreal* could, however, prove to be a starting point for new legislation.

For the time being, what all Texas magistrates need to know is that the holding in *Villarreal* excises Sections 724.011(a), 724.012(b), and 724.013 from the Transportation Code. Also, municipal judges, in their roles as magistrates, should anticipate continued, concerted efforts by law enforcement to procure blood pursuant to a search warrant. This only seems all the more certain in light of *Villarreal*.

### REMINDER

**In 2015, it is the responsibility of every municipal judge to obtain IDEA & child welfare training required by law.**

**For more information:**  
[www.tmcec.com/programs/judges/idea-childwelfare](http://www.tmcec.com/programs/judges/idea-childwelfare)

---

# TRANSPORTATION NETWORK COMPANIES: Litigation, Livelihood, and Local Regulation

Regan Metteauer  
Program Attorney, TMCEC

Last year, global headlines raged against companies like Uber, Lyft, and Sidecar with blasts charging disruption of city transportation structure, destruction of the taxi industry, fraud, unfair competition, racketeering, surge pricing, aggressive poaching tactics, bad labor practices, and even alleged rape and assault by drivers. The last major headline in 2014 was South Korea's indictment of the local subsidiary and CEO of Uber Technologies, Inc., Travis Kalanick, for violating a public transport law by providing transportation services without appropriate licensing.<sup>1</sup> Against this dark backdrop of criticism and legal battles is the glow of potential success. As of December of 2014, a new round of funding valued Uber Technologies, Inc. at \$41 billion.<sup>2</sup> Clearly, support exists for these new services, which differ from traditional taxis or carpooling. Where is the flash point generating these headlines? Local municipalities.

## Transportation Network Companies

The definition of a Transportation Network Company (TNC) first appeared in rules promulgated by the California Public Utilities Commission (CPUC) in 2013 addressing new unregulated forms of transportation.<sup>3</sup> California was the first state to regulate peer-to-peer transportation services like Uber. The taxi industry opposed the creation of this new category of transportation by questioning the legality of services that operated just like taxis without complying with regulations.<sup>4</sup> A TNC is a company that uses an online-enabled platform to connect passengers with drivers using their personal, non-commercial vehicles.<sup>5</sup> TNCs fall out of the definition of ride-sharing under the CPUC rules, defined as casual carpooling.<sup>6</sup> Similarly, federal law groups ride-sharing services with carpools and vanpools, describing ride-sharing as where drivers using an electronic transfer of funds, recover costs directly associated with the trip provided through the use of location technology to quantify those direct costs, subject to the condition that the cost recovered does not exceed the cost of the trip provided.<sup>7</sup> Companies like Uber, Lyft, and Sidecar do not meet the CPUC definition or federal description of ride-sharing services because drivers earn a profit that exceeds the cost of the trip provided. However, TNCs have marketed themselves as ride-sharing services (likely to avoid regulation) and the media uses that term to describe them as well. Other terms exist to describe such services. For example, the City of San Antonio uses the term "vehicles for hire" in its ordinance. The City of Dallas uses the term "transportation for hire."

Uber, the largest TNC, is a San Francisco-based company that was founded in 2009 (UberCab) and launched in 2010 (as was the launch of the mobile app for iPhones and Androids), originally offering only full-size luxury cars for hire (UberBLACK). In 2012, the company launched uberX, which uses any qualified driver with a personal, non-luxury car (the peer-to-peer model in lieu of using drivers from third-party limo and taxi services). Other services include UberTaxi, which partners with local taxi commissions, UberXL, UberSUV, UberCHOPPER, which offered promotional helicopter rides from New York City to the Hamptons,<sup>8</sup> and other various short-term promotions that have included hiring ice cream trucks,<sup>9</sup> DeLorean rides<sup>10</sup>, kitten delivery on National Cat Day,<sup>11</sup> and Christmas tree delivery service.<sup>12</sup> Uber expanded outside the United States in 2011, first in Paris, and now operates in 53 countries and over 200 cities worldwide.<sup>13</sup>

Younger companies like Lyft and Sidecar, both also based in San Francisco, are less formal. Lyft launched in 2012 as a service of Zimride, a ride-sharing company founded in 2007. Lyft arguably led the peer-to-peer model, which was later adopted by Uber (uberX). Lyft has a mobile phone app that connects riders to drivers who use their personal car. Lyft's tagline is "your friend with a car," currently operating in 65 U.S. cities and known for its signature pink mustaches on its cars and fist bumps between drivers and passengers who both sit in front.<sup>14</sup> Sidecar was founded in 2012 as a transportation community, intended to connect daily drivers with others in the community looking for options beyond mass transit and taxis.<sup>15</sup> SideCar CEO, Sunil Paul, described the platform as the first-ever "crowd-sourced transportation network."<sup>16</sup> SideCar serves roughly 12 U.S. cities, including Austin.

What all TNCs have in common is how they work. Passengers use a mobile phone application to summon a driver and pay for the ride with credit card information stored within the app (differences exist between TNCs concerning gratuity). Lyft and SideCar collect donations in some cities as payment. Drivers and passengers rate each other after the ride, which affects future pairings and employment for the drivers. The apps include features such as price quotes, ETA (which can be shared), visible routes on a map, and tracking the car on its way to pick up the passenger. During high demand times, pricing goes up ("Surge Pricing" for Uber and "Prime Time" pricing for Lyft for example). All TNCs have set safety standards in some form, which vary based on local regulations (when they actually follow them) and include

---

driver background checks, vehicle standards, cashless transactions, and some form of insurance coverage. Insurance requirements for TNCs are a major concern and have been the subject of recent state legislative sessions.<sup>17</sup>

## **Litigation**

Other concerns have sparked numerous lawsuits against TNCs. Cities have sought declaratory judgments and injunctive relief, claiming violations of city code regulations.<sup>18</sup> Those regulations are in place for public health, safety, and to protect consumers from fraud. Many of these lawsuits resulted in settlements and improvements in policies adopted by TNCs.<sup>19</sup>

Passengers with disabilities have brought ADA claims for failing to provide an accessible cab or equivalent transportation.<sup>20</sup> The American Disabilities Act requires certain public accommodations and private entities to offer “reasonable accommodations” for wheelchair users.<sup>21</sup> However, wheelchair-accessible vehicles are not common in the traditional taxi system either, but taxi companies are at least required in many cities to make some of their vehicles wheelchair-accessible.<sup>22</sup> A coalition of Texas disability advocates sued Uber and Lyft as well as Austin-based Yellow Cab in July of 2014 in Travis County, just before the anniversary of the federal legislation, as part of a coordinated effort.<sup>23</sup> The California chapter of the National Federation of the Blind filed a lawsuit against Uber in September of 2014 for discrimination against blind passengers (one driver allegedly put a service animal in the trunk).<sup>24</sup>

Taxi and limousine companies are also on the list of plaintiffs against TNCs. Some Uber drivers are associated with taxi and limousine companies resulting in passengers paying for rides through Uber in a vehicle belonging to those companies and bearing those companies’ trademarks.<sup>25</sup> Other claims by taxi and limousine companies include misrepresentation of rates, licensure, and insurance resulting in unfair competition.<sup>26</sup> These issues also prompted protests and demonstrations by taxi drivers in places like Washington, D.C. and London.

The district attorneys of Los Angeles and San Francisco sued Uber and settled with Lyft over misrepresentations that their background checks were “industry leading” without conducting fingerprint checks.<sup>27</sup> Uber also faced multiple lawsuits by its customers for fraud, misrepresentation, breach of contract, and deceptive trade practices for its assessment of a 20% gratuity, of which only part goes to the driver, and the rest is kept by Uber.<sup>28</sup>

Uber’s specific problems in 2014 went beyond litigation. The company was accused of purposefully ordering and cancelling thousands of rides from its rival, Lyft.<sup>29</sup>

Reports also surfaced that Uber executives targeted critical journalists even to the point of tracking a journalist’s ride without her knowledge.<sup>30</sup> Individual Uber drivers have also been accused of rape in New Dehli and kidnapping in Los Angeles.<sup>31</sup>

## **Livelihood**

Employment of drivers by TNCs is another topic of interest making the headlines last year. The effect on the economy and the taxi industry is unclear. Uber claims the median salary for uberX drivers in New York is about \$90,000 per year, but other reports showed drivers making less than minimum wage.<sup>32</sup> That may be attributable to increased competition between TNCs. In January of 2014, Uber reduced its fares by over 20% and Lyft cut fares by about 30% in April of 2014.<sup>33</sup> Almost 100 uberX drivers protested in San Francisco for higher pay.<sup>34</sup> There is no doubt that TNCs have created new jobs. The viability and prosperity of those jobs is wavering.

Many thought, and still think, that TNCs are killing the taxi industry. In February of 2014, New York bidders paid as much as \$965,000 for yellow-cab medallions, casting doubt on the demise of the taxi system.<sup>35</sup> Almost all big cities use a system of medallions to limit the number of taxis that can operate on their streets. Early on, some doubted a negative impact on the taxi industry and even suggested TNCs might result in a raise of taxi drivers’ income.<sup>36</sup> However, there have been signs of strain on medallion values since then in New York, Chicago, and San Francisco.<sup>37</sup> Believing the threat to be real, the taxi industry has protested, filed lawsuits, and lobbied local politicians in an effort to stop TNCs. Some taxi drivers are using Flywheel, an app that helps compete with TNCs.<sup>38</sup> Chicago approved a plan on December 10, 2014 to sponsor its own alternative to TNCs.<sup>39</sup> New York is considering following suit. Because cab drivers work for small fleets instead of a national corporation like Uber and have to lease an expensive medallion, competition with TNCs remains difficult. Future legislation may determine the fate of both industries.

## **Local Regulation**

State and local governments have been caught off-guard by the aggressive, accelerated permeation of TNCs into cities, almost always operating in violation of laws and city codes. However, that strategy has proven successful. State and city governments across the U.S. (and beyond) have come out strong to oppose TNCs only to quickly pull back and reevaluate, resulting in agreements and ordinances making them legal. Uber and Lyft routinely ignored cease and desist orders, continuing to operate in places like Anchorage, Ann Arbor, Los Angeles, Memphis, Pittsburgh, and the list goes on. The consequence was favorable action by the same city governments. TNCs are currently legally operating

---

in those cities (rules are on the horizon for Memphis, Tennessee).<sup>40</sup> Germany placed a nationwide ban on UberPop, finding it competed unfairly with its local taxi industry, but that ban was lifted after two weeks.<sup>41</sup> Uber continued operating during the ban.

Ordinances vary widely, even within an individual state. In Texas, major cities like Austin, Dallas, Houston, and San Antonio have recently passed ordinances related to regulating TNCs. Houston was the first to pass an ordinance on August 6, 2014, which is considered the most stringent of the Texas city ordinances (arguably rivaled by San Antonio).<sup>42</sup> The requirements, which took effect on November 4, 2014, are an attempt to keep TNCs in line with taxis. For example, applicants must use a state fingerprint background check company. Drivers must submit to a warrant check, be drug-tested, and give their personal information to the city. Fire extinguishers are required in vehicles as well. As a result, Lyft left Houston, while Uber continues to operate within the Houston city regulations.

Austin's ordinance authorizing TNCs to operate in the city went into effect on October 27, 2014.<sup>43</sup> In 2013, Austin City Council had passed a revised definition of ridesharing disallowing ridesharing in which the compensation was higher than the federally determined \$.56 per mile, but formed a subcommittee to examine and make recommendations on allowing TNCs to legally operate in Austin. Now, to operate in Austin, a TNC must enter into an agreement with the city with the provisions provided in the ordinance. Entities meeting the definition of a TNC operating without an agreement commit a Class C misdemeanor, punishable by a fine of not less than \$500 per offense. The ordinance addresses insurance requirements (similar to California's), driver requirements (including training provided by the TNC), criminal background and driver history checks, ADA accommodations, and unique reporting requirements. The city will receive information on rider pickup and drop-off locations, peak operation times, pricing, occurrences of surge pricing, ride lengths, and comparisons of services for persons with disabilities with other services in order to help the city evaluate the role of TNCs to address transportation issues.<sup>44</sup>

Dallas overhauled its existing transportation-for-hire ordinance on December 10, 2014 to address TNCs already operating in Dallas without regulation.<sup>45</sup> The road to that ordinance was long, and in the end, the ordinance is viewed as a compromise that creates more equal competition.<sup>46</sup> However, some call it a double standard. Taxis and other hailed vehicles are still limited in the rates they can charge, while other vehicles will be unregulated regarding fares. The ordinance also addresses insurance (TNCs do not have to have round the clock insurance like taxis), background checks, and vehicle

requirements. The Dallas ordinance takes effect on April 30, 2015.

San Antonio's ordinance, which passed a day after Dallas' on December 11, 2014, could be considered the mirror image of Dallas' ordinance.<sup>47</sup> The new regulations are strict for TNCs and may threaten to close down their services.<sup>48</sup> The new regulations include a 10-fingerprint background check and third-party inspections for TNC vehicles (called "vehicles for hire" in the ordinance). TNC drivers must also carry fire extinguishers (taxis are already required to do so). Uber expressed concern in a letter to San Antonio officials prior to the passing of the ordinance that it contains numerous anti-competitive driver requirements that deviate from the task force's recommendations and city ordinances passed in other major Texas cities.<sup>49</sup> Taxi cab companies have not expressed complaints. The San Antonio ordinance takes effect March 1, 2015.

As of the date, no proposed bills regarding TNCs have been introduced in the 84th Texas Legislature. Unless the Texas Legislature or possibly the Federal Trade Commission acts, the fate of Uber, Lyft, and other TNCs in Texas lies in the hands of each city. Texas municipal judges and prosecutors should be aware of existing ordinances in their respective cities and have an understanding of policy considerations surrounding these new entities.

---

<sup>1</sup> Reuters, *South Korea indicts Uber CEO Travis Kalanick*, <http://fortune.com/2014/12/24/uber-indicted-south-korea/> (December 24, 2014).

<sup>2</sup> Douglas Macmillan, Sam Schechner, and Lisa Fleisher, *The Wall Street Journal*, *Uber Snags \$41 Billion Valuation*, <http://www.wsj.com/articles/ubers-new-funding-values-it-at-over-41-billion-1417715938> (accessed December 30, 2014).

<sup>3</sup> Tomio Geron, Forbes, *California Becomes First State to Regulate Ridesharing Services Lyft, Sidecar, UberX*, <http://www.forbes.com/sites/tomiogeron/2013/09/19/california-becomes-first-state-to-regulate-ridesharing-services-lyft-sidecar-uberx/> (September 9, 2013).

<sup>4</sup> Alex Goldmark, *WNYC*, *In California, They're Not Taxis, They're "Transportation Network Companies"*, <http://www.wnyc.org/story/311452-california-theyre-not-taxis-theyre-transportation-network-companies/> (August 8, 2013).

<sup>5</sup> Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, California Public Utilities Commission, R.12-12-011, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K112/77112285.PDF> (September 19, 2013).

<sup>6</sup> See, endnote 3.

<sup>7</sup> 23 U.S.C. § 101 (2012).

<sup>8</sup> Dan Amira, *New York Magazine*, *Uber Will Ferry Hampton-Goers Via Helicopter This July 3rd*, <http://nymag.com/daily/intelligencer/2013/07/uber-helicopter-uberchopper-hampton-july-3rd.html> (July 1, 2013).

<sup>9</sup> Barbara Ortutay, *Oakland Press News*, *Uber brings back on-demand ice cream trucks*, <http://www.theoaklandpress.com/general-news/20130719/uber-brings-lyft-back-on-demand-ice-cream-trucks> (July 19, 2013).

<sup>10</sup> Nick Statt, *CNET*, *Uber offering rides back in time with DeLorean promotion*, <http://www.cnet.com/news/uber-offering-rides-back-in->

- [time-with-delorean-promotion/](#) (September 6, 2013).
- <sup>11</sup> Julianne Pepitone, *CNN Money*, *Uber is delivering kittens for National Cat Day*, <http://money.cnn.com/2013/10/29/technology/uber-kittens/> (October 29, 2013).
- <sup>12</sup> Caroline Moss, *Business Insider*, *Uber Is Delivering Christmas Trees On-Demand For \$135*, <http://www.businessinsider.com/uber-is-delivering-christmas-trees-on-demand-2013-12> (December 4, 2013).
- <sup>13</sup> Uber.com, <https://www.uber.com/cities> (accessed December 30, 2014).
- <sup>14</sup> Christina Farr, *VB News*, *Lyft Team Gets \$60M More; Now It Must Prove Ride-Sharing Can Go Global*, <http://venturebeat.com/2013/05/23/lyft-races-ahead-with-60m-in-funding-but-what-challenges-lie-ahead/> (May 23, 2013).
- <sup>15</sup> YAHOO! Finance, *SideCar Connects Drivers and Passengers One Ride at a Time*, <http://finance.yahoo.com/news/sidecar-connects-drivers-passengers-one-131500215.html> (June 26, 2012).
- <sup>16</sup> *Id.*
- <sup>17</sup> See, California requirements: <http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC+Insurance+Requirements.htm>; Pennsylvania legislation introduced: <http://www.bizjournals.com/pittsburgh/news/2014/07/08/ride-share-legislation-introduced-in-pennsylvania.html?page=all>; Illinois legislation: <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=4075&GAID=12&DocTypeID=HB&SessionID=85&GA=98>.
- <sup>18</sup> See, *City of Portland v. Uber Techs., Inc.*, 2014 U.S. Dist. LEXIS 172641 (D. Or. 2014).
- <sup>19</sup> William M. Welch, *USA Today*, *Calif. Cities Sue Uber, Clear Lyft*, <http://www.usatoday.com/story/news/nation/2014/12/09/calif-cities-sue-uber-clear-lyft/20165973/> (December 10, 2014); Portland Bureau of Transportation, *News Release: City of Portland Sues Uber for Operating Illegal, Unregulated Transportation Service*, <https://www.portlandoregon.gov/transportation/article/511920> (December 8, 2014).
- <sup>20</sup> See generally, *McPhail v. Lyft, Inc.*, 2014 U.S. Dist. LEXIS 165173 (W.D. Tex. 2014); *Salovitz v. Uber Techs., Inc.*, 2014 U.S. Dist. LEXIS 147898 (W.D. Tex. 2014).
- <sup>21</sup> See, 42 USCS §§ 12181 et seq.
- <sup>22</sup> Ted Trautman, *Next City*, *Will Uber Serve Customers with Disabilities?*, <http://nextcity.org/daily/entry/wheelchair-users-ride-share-uber-lyft> (June 30, 2014).
- <sup>23</sup> Brian M. Rosenthal, *Houston Chronicle*, *Texas Disability Advocates Sue Uber, Lyft, 30 Other Entities*, <http://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-disability-advocates-sue-Uber-Lyft-30-5645520.php> (July 24, 2014).
- <sup>24</sup> Gail Sullivan, *The Washington Post*, *Uber Sued for Allegedly Refusing Rides to the Blind and Putting Dog in the Trunk*, <http://www.washingtonpost.com/news/morning-mix/wp/2014/09/10/uber-sued-for-allegedly-refusing-rides-to-the-blind-and-putting-a-dog-in-the-trunk/> (September 10, 2014).
- <sup>25</sup> See, *Yellow Group LLC v. Uber Techs. Inc.*, 2014 U.S. Dist. LEXIS 94093 (N.D. Ill. 2014).
- <sup>26</sup> *Id.*; See, *Manzo v. Uber Techs., Inc.*, 2014 U.S. Dist. LEXIS 95106 (N.D. Ill. 2014); *Boston Cab Dispatch, Inc. v. Uber Techs., Inc.*, 2014 U.S. Dist. LEXIS 42063 (D. Mass. 2014).
- <sup>27</sup> Ellen Huet, *Forbes*, *SF, LA District Attorneys Sue Uber, Settle with Lyft over "Misleading" Business Violations*, <http://www.forbes.com/sites/ellenhuet/2014/12/09/sf-la-district-attorneys-sue-uber-and-lyft-over-misleading-business-violations/> (December 9, 2014).
- <sup>28</sup> See generally, *Ehret v. Uber Techs., Inc.*, 2014 U.S. Dist. LEXIS 132125 (N.D. Cal. 2014).
- <sup>29</sup> Keith Wagstaff, *NBC NEWS*, *Uber's Wild 2014: Can Lawsuits and Protests Bring It Down?*, <http://www.nbcnews.com/tech/innovation/ubers-wild-2014-can-lawsuits-protests-bring-it-down-n265536> (accessed December 31, 2014).
- <sup>30</sup> *Id.*
- <sup>31</sup> *Id.*
- <sup>32</sup> Maya Kosoff, *Business Insider*, *A Lot Less Money Than Uber Is Telling People*, <http://www.businessinsider.com/uber-drivers-say-theyre-making-less-than-minimum-wage-2014-10> (October 29, 2014).
- <sup>33</sup> JP Mangalindan, *Fortune*, *In Price Wars, Some Uber and Lyft Drivers Feel the Crunch*, <http://fortune.com/2014/05/28/in-price-wars-some-uber-and-lyft-drivers-feel-the-crunch/> (May 28, 2014).
- <sup>34</sup> *Id.*
- <sup>35</sup> Joshua Brustein and Caroline Winter, *Businessweek.com*, *If Uber Is Killing Taxis, What Explains the Million-Dollar Medallions?*, <http://www.businessweek.com/articles/2014-02-28/if-uber-is-killing-taxis-what-explains-new-yorks-million-dollar-medallions> (February 28, 2014).
- <sup>36</sup> Tim Worstall, *Forbes*, *How Lyft and Uber Will Raise Taxi Drivers' Incomes, Not Lower Them*, <http://www.forbes.com/sites/timworstall/2013/12/12/how-lyft-and-uber-will-raise-taxi-drivers-incomes-not-lower-them/> (December 12, 2013).
- <sup>37</sup> Joshua Brustein, *Businessweek.com*, *Uber's Fare War on New York Taxis Puts Million-Dollar Medallions at Risk*, <http://www.businessweek.com/articles/2014-07-07/ubers-fare-war-on-new-york-taxis-puts-million-dollar-medallions-at-risk> (July 7, 2014).
- <sup>38</sup> See, flywheel.com.
- <sup>39</sup> See, footnote 29.
- <sup>40</sup> Moly Smith, *WREG.com*, *New rules for Uber and Lyft coming to Memphis*, <http://wreg.com/2014/12/02/new-rules-for-uber-and-lyft-coming-to-memphis/> (December 2, 2014).
- <sup>41</sup> Mark Scott and Sarah Plass, *NY Times*, *German Court Lifts Ban on Uber Ride Service*, <http://www.nytimes.com/2014/09/17/business/international/uber-ban-in-germany-is-lifted-by-court.html> (September 16, 2014).
- <sup>42</sup> Houston, Tex., Ordin. 2014-754 (August 6, 2014). Available online at <http://www.houstontx.gov/ara/2014-754.pdf> (accessed December 30, 2014).
- <sup>43</sup> Austin, Tex., Ordin. 20141016-038 (October 16, 2014). Available online at [https://www.municode.com/library/tx/austin/ordinances/code\\_of\\_ordinances?nodeId=679698](https://www.municode.com/library/tx/austin/ordinances/code_of_ordinances?nodeId=679698) (accessed December 31, 2014).
- <sup>44</sup> *Id.*
- <sup>45</sup> Tom Benning, *The Dallas Morning News*, *Dallas Adopts Rules Governing Uber and Other Car-For-Hire Apps*, <http://www.dallasnews.com/news/transportation/20141210-dallas-adopts-rules-governing-uber-and-other-car-for-hire-apps.ece> (December 10, 2014). See, the draft ordinance at [http://dallascityhall.com/pdf/transportation-for-hire\\_draft.pdf](http://dallascityhall.com/pdf/transportation-for-hire_draft.pdf) (accessed December 30, 2014).
- <sup>46</sup> *Id.*
- <sup>47</sup> San Antonio, Tex., Ordin. 2014-12-11-1002 (December 11, 2014). Available online at <https://sanantonio.legistar.com/LegislationDetail.aspx?ID=2078222&GUID=3C6BCD99-4274-427D-ACB2-836095B87E66> (accessed December 30, 2014).
- <sup>48</sup> Josh Baugh and John MacCormack, *mySA*, *City Council Approves New Ride-Share Regulations for Lyft, Uber*, <http://www.mysanantonio.com/news/local/article/Supporters-detractors-pack-City-Hall-to-weigh-in-5950675.php> (December 11, 2014).
- <sup>49</sup> *mySA*, *Letter to San Antonio Council*, <http://www.mysanantonio.com/file/961/961-Letter%20to%20San%20Antonio%20Council.pdf> (accessed December 31, 2014).

**Don't forget!**  
 You can register for regional seminars online at <http://register.tmcec.com>

---

# ETHICS UPDATE

## EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2014. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2014. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in ascending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public sanction is published on the Commission website. A copy of any public disciplinary record may also be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2014. The reader should note that the summaries provide only general information and may omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inference from the fact situations provided in these summaries.

It is important to remember that the purpose of judicial discipline is not to punish the judge for engaging in misconduct but to protect the public by alerting them that conduct that violates the public trust will not be condoned. However, the reader should note that not every transgression reported to the Commission will, or should, result in disciplinary action. The Commission has broad discretion to determine whether disciplinary action is appropriate, and the degree of discipline to be imposed. Factors such as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system, will inform and impact the Commission's decision in each case. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the competence, integrity, impartiality, and independence of the judiciary and further assist the judiciary in establishing, maintaining, and enforcing the highest standards of conduct – both on the bench and in their personal lives.

### **CANON 2A: A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.**

- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she issued orders for a litigant to turn over his child and issued a Writ of Attachment for the child (1) without notice to the litigant or his attorney; (2) without conducting a hearing; and (3) in the absence of supporting pleadings and/or affidavits on file with the court. In this case, the facts and evidence demonstrated that the judge's actions were done not in a good faith effort to protect the best interests of the child, but rather to punish the litigant for what the judge perceived to be his efforts to delay the matter until she left office at the end of the year. Because she believed that she was "being played with," the judge forced the litigant to relinquish custody of his child over the Christmas holidays without notice or a hearing, and/or without credible evidence that the child was in any harm or danger. The judge failed to afford the litigant the right to be heard when she went forward with proceedings in the absence of the litigant and his attorney, entertained *ex parte* arguments from opposing counsel and the mother about the merits of the pending motion for continuance, and acted upon that *ex parte* information by issuing a Turnover Order, a Writ of Attachment, and modified Temporary Orders. Finally, the judge failed to cooperate with the Commission's investigation by initially providing misleading information in her sworn written responses, and thereafter providing oral testimony that contradicted court records previously supplied to the Commission. In addition, the judge's conduct and demeanor during her appearance before the Commission appeared designed to obfuscate the facts and evidence and thwart the Commission's attempts to investigate and resolve the issues presented by the complaint. [Violations of Canons 2A, 2B, 3B(2), and 3B(8); Article V, §1a(6) A of the Texas Constitution.] *Public Warning of a Former District Court Judge.* (11/12/13).
- The judge failed to comply with the law, failed to maintain professional competence in the law, and engaged in

---

willful and persistent conduct that cast public discredit upon the judiciary and upon the administration of justice by engaging in an extended practice of dismissing citations without a motion from the prosecutor. According to the judge, he dismissed citations due to political pressures and a fear of losing his job, evidencing that the judge was neither independent nor impartial as required by law. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Public Reprimand of a Former Municipal Court Judge*. (07/03/14).

- The judge demonstrated incompetence in performing the duties of office, failed to comply with the law, and failed to maintain professional competence in the law by repeatedly failing to timely and successfully complete his judicial education hours in his first term in office and by failing to cooperate with the Commission's investigation into this matter. In addition, the judge knew, or should have known, that his arrests for public intoxication and for driving while intoxicated would severely compromise the public's confidence in the integrity and impartiality of the judiciary, especially given the judge's testimony that he presides over alcohol-related offenses in his court, magistrates defendants charged with alcohol-related offenses, and would like to be seen as a role model to the youth in his community. Moreover, the judge's plea of guilty to the offense of deadly conduct demonstrated a failure to comply with the law and constituted conduct inconsistent with the proper performance of judicial duties and that cast public discredit upon the judiciary and upon the administration of justice. [Violations of Canons 2A, 3B(2) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Reprimand and Order of Additional Education of a Justice of the Peace*. (08/21/14).
- The judge failed to comply with the law, failed to maintain professional competence in the law, and demonstrated incompetence in performing the duties of office when he entered a broad receivership order in a divorce case that granted the receiver non-delegable judicial powers. These non-delegable powers included the unfettered authority for the receiver to make payments to himself and to his attorneys in excess of \$2 million from settlement proceeds arguably belonging to the litigants' community estate, and to bankruptcy creditors without any court oversight, approval, or intervention. In addition, the judge failed to comply with the Texas Fair Defense Act and the Hidalgo County Indigent Defense Plan as evidenced by the disproportionately high percentage of indigent court appointments that a local attorney received out of the 370th District Court from January 1, 2008 through December 31, 2013. [Violation of Canons 2A, 3B(2) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Admonition and Order of Additional Education of a District Court Judge*. (08/26/14).
- The judge failed to follow the law when he *sua sponte* remanded a defendant into custody and doubled her bond after she appeared in court without her attorney. There was no evidence in the record that (1) the defendant had missed a court date or was late for the hearing, (2) her bond was defective or insufficient, or (3) "other good and sufficient cause" existed for sending her to jail. Absent a record of the judge's reasons for finding the bond insufficient, one could conclude that the defendant served three days in jail simply because she came to court without her attorney. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Reprimand of a Senior Judge*. (09/16/13).
- The judge failed to comply with the law and failed to maintain professional competence in the law when he failed to timely forward a recusal motion to the Presiding Judge of the Administrative Judicial Region and delayed entry of the order of recusal in a case involving a former law partner/material witness until a petition for writ of mandamus had been filed against the judge to compel him to comply with Rule 18a of the Texas Rules of Civil Procedure. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Private Warning and Order of Additional Education of a District Court Judge*. (08/27/14).

**CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.**

- The judge magistrated someone with whom he had a romantic relationship, allowed her to be released on a PR bond, and did so knowing that another judge who did not have a conflict of interest was willing and available to conduct the magistration. The judge's intervention in a criminal case involving his girlfriend created the appearance and the reality that he was allowing his relationship with her to influence his judicial conduct and judgment, that he was giving her favorable treatment, and that she was in a special position to influence the judge. The fact that the judge has previously been disciplined for engaging in the same or similar conduct in aid

---

of his girlfriend was an aggravating factor in determining the level of discipline in this case and demonstrated that his actions in this instance were both willful and persistent. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Public Reprimand of a Justice of the Peace*. (09/17/13).

- The judge's letter requesting a continuance on behalf of an employee of the court who had a traffic-related offense pending in another court constituted an improper use of the prestige of judicial office to advance the employee's private interests, and raised concerns that the judge was using his higher court position in an attempt to influence a lower court judge to grant the employee relief that would not otherwise have been granted had it been filed by the employee herself or by an attorney acting on her behalf. [Violation of Canon 2B of the Texas code of judicial conduct.] *Private Admonition of a District Court Judge*. (11/06/13).
- The judge made a phone call to the arresting police officer on behalf of a friend, which was perceived by the officer as an improper attempt by the judge to use the prestige of judicial office to advance the arrestee's private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge*. (08/19/13).
- The judge allowed a relationship with a family member to influence his conduct and by making a phone call, even as a courtesy, lent the prestige of his office to advance the family member's private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (03/10/14).
- The judge lent the prestige of his judicial office to advance the private interest of a member of court staff by allowing that individual to conduct free mediations at the courthouse during regular courthouse business hours. The judge's practice of referring mediations to the staff member while that person simultaneously served the court created the appearance that the judge was allowing his relationship to influence his judicial conduct or judgment and that the staff person/mediator was in a special position to influence the judge. The judge additionally created a conflict of interest and failed to follow the law by knowingly allowing court staff to divert time, attention, and resources away from their duties and responsibilities to the court and towards tasks related to the mediation business, in violation of county policy. [Violation of Canons 2A and 2B of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Court Judge*. (03/19/14).

**CANON 3B(2): A judge shall maintain professional competence in [the law.]**

- The judge failed to follow the law and demonstrated a lack of professional competence in the law when she: (1) became involved in a church dispute over which she had no jurisdiction; (2) granted a writ of re-entry in a case in which the parties were not in a landlord-tenant relationship; (3) denied a litigant's right to be heard at the hearing; and (4) denied the litigant's right to appeal the order granting the writ of re-entry and/or advised the litigant that a writ of re-entry was not an appealable order. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (09/10/13).
- The judge failed to adequately supervise his court staff, failed to follow the law, and/or demonstrate a lack of professional competence in the law when: (1) the defendant's change of plea was accepted by telephone without any written documentation; (2) the defendant was prevented by the court clerk from having the judge determine whether he could be placed on a payment plan, as required by Article 45.041(b)(2) of the Texas Code of Criminal Procedure; (3) the judge signed and issued a *capias pro fine* that improperly directed law enforcement officials to incarcerate the defendant, rather than directing them to take the defendant to court for a hearing to be conducted pursuant to Article 45.046 of the Texas Code of Criminal Procedure; and (4) the judge's court staff engaged in inadequate record-keeping procedures, which contributed to the confusion that occurred in resolving the defendant's case. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (09/23/13).
- The judge failed to follow the law, and/or demonstrated a lack of professional competence in the law when (1) the judge signed and issued *capias pro fine* warrants that improperly directed law enforcement officers to incarcerate a defendant rather than directing them to bring the defendant before the court; and (2) the judge charged the defendant with numerous Failure to Appear offenses, assessing additional fines and costs against the defendant in cases that had already been adjudicated. [Violation of Canons 2A and 3B(2) of the Texas Code of

---

Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (11/15/13).

- The judge failed to comply with the law and failed to maintain professional competence in the law when, without proper notice or an opportunity to be heard, she held a litigant in contempt of court and had her incarcerated over the weekend for failing to comply with temporary orders. Based on her testimony before the Commission, it appeared the judge failed to appreciate the distinction between criminal versus civil contempt, direct versus constructive contempt, and the proper procedures to follow in each type of case before subjecting a litigant to incarceration. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Reprimand and Order of Additional Education of a District Court Judge.* (12/19/13).
- The judge failed to follow the law, demonstrated a lack of professional competence in the law, and denied the defendant the right to be heard when she (1) went forward with a trial and found the defendant guilty *in absentia* and (2) issued a judgment and arrest warrant that improperly directed law enforcement officials to incarcerate the defendant, rather than directing them to take the defendant to court for a hearing pursuant to Article 45.046 of the Texas Code of Criminal Procedure. [Violation of Canons 2A, 3B(2) and 3B(3) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace.* (04/04/14).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by granting an interested party a remedy to which she was not legally entitled. Based on the records presented to him by the interested party, the judge knew or should have known the party was not a tenant of the property and was merely attempting to circumvent proper procedures by approaching the judge in an *ex parte* manner to obtain the Writ of Re-Entry. The judge failed to comply with the law by contacting the tenant to advise her that a Writ of Re-Entry had been issued. [Violation of Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (04/16/14).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law in his (1) handling of contempt of court and failure to appear situations involving two truancy cases; (2) use of forms that contained inconsistent and misleading information and warnings that were not consistent with the law; (3) failure to take appropriate measures to ensure the proper and safe maintenance and storage of court records; and (4) dismissal of criminal cases without a motion from the prosecutor. [Violation of Canons 2A, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (04/16/14).
- The judge failed to comply with the law and failed to maintain professional competence in the law when he issued a non-monetary judgment in a small claims case which required the defendant to remove a structure from the plaintiff's property and then deprived the defendant of his right to appeal the judgment within the ten-day period provided by the law in effect at the time. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Former Justice of the Peace.* (08/15/14).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he (1) denied a litigant's motion to dismiss the defendant's appeal after the defendant failed to timely correct the deficient appeal bond from the justice court which deprived the judge of jurisdiction; (2) ordered the litigant to immediately comply with the judge's order, under threat of arrest, even though no written judgment had been entered in the case; (3) failed to timely respond to the litigant's request to set a supersedeas bond in the case; (4) failed to timely issue a written judgment from which the litigant could appeal; and (5) set an excessive supersedeas bond based on factors that were not authorized and/or allowable under the law. In addition, the county attorney, who was related to the judge, provided the judge with legal advice and assistance in the civil case while simultaneously handling the prosecution of a criminal case pending before the judge involving the same litigants and dispute. The relationship between the judge and prosecutor and their interactions in the civil and criminal cases created an appearance – if not the reality – that the prosecutor and judge discussed facts or otherwise shared information pertaining to the proceedings and conveyed the impression the prosecutor was in a special position to influence the judge. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning of a County Judge.* (08/26/14).

**CANON 3B(3): A judge shall require order and decorum in proceedings before the judge.**

- The judge failed to maintain order and decorum in the courtroom and failed to treat litigants with dignity by allowing them to perform push-ups in the courtroom for being late to court. [Violation of Canons 3B(3) and

---

3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge*. (01/08/14).

- The judge failed to maintain order and decorum in the proceedings before him and failed to be patient, dignified and courteous by using profanity while presiding over a court proceeding. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge*. (08/07/14).

**CANON 3B(4): A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.**

- The judge allowed an adversarial relationship with the Director of the probation department to improperly influence the judge's conduct and judgment. Based on the record before the Commission, there was sufficient evidence of bad faith in the judge's conduct toward the Director and towards those individuals that the judge perceived were acting on the Director's behalf. Based on the judge's representations as to his expertise in the law, the Commission discounted the notion put forth by the judge that he made mistakes in how he handled certain proceedings and concluded that the judge intentionally misused the judicial office to cause harm to the Director and others connected with him. The evidence demonstrated that the judge's orders involving the Director were done not in a good faith effort to protect the interests or rights of the State or the defendants, but rather were made for the purpose of embarrassing and punishing the Director. The judge abandoned the role of an independent, neutral, and detached judge every time he became embroiled with the Director or someone who was, or appeared to be, working on the Director's behalf. The Commission further concluded that the judge willfully and persistently treated a prosecutor in a demeaning manner during and after a criminal trial. The Commission found the judge's threat to use duct tape on the prosecutor to be excessive and unfair, especially given the fact that (1) the prosecutor had already apologized and promised not to engage in the conduct that offended the judge, and (2) the judge's own intransigence and unreasonable failure to rule on the State's motions contributed to the very situation that had so offended the judge. Further, the judge's animosity toward the prosecutor impacted the judge's conduct and judgment in the trial, and by preventing the prosecutor from conducting voir dire, the judge also interfered with the State's right to a fair trial. Finally, the judge failed in his duty to rule on the motions presented to him by the State and the defendant's counsel. [Violations of Canons 2A, 2B, 3B(1), 3B(3), 3B(4), 3B(8) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Reprimand of a District Court Judge*. (05/21/14).
- The judge lost his patience, and failed to act in a dignified, courteous manner when he ordered law enforcement officers and members of the victim's family to leave the courthouse following a criminal trial. The judge should have exercised more judicial restraint and decorum in the manner in which he continued to pursue the departure of these individuals while they waited in the safety of the district attorney's office. It appeared that, given the history of conflict between the judge and the district attorney, the judge may have been taking out his anger or frustration with the district attorney by lashing out at the family members instead, leaving the family members feeling victimized once more. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge*. (09/16/13).
- The judge failed to treat an employee in a patient, dignified, and courteous manner when he touched her and/or made comments to her that he knew, or should have known, she would find offensive. While the judge may not have had the intent to offend and/or may not have initially realized that his conduct was offensive, his failure to curtail his actions after being notified that his conduct made the employee feel uncomfortable led to negative media attention that centered on the fact that he ultimately entered a plea of nolo contendere to criminal charges that were filed against him. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Reprimand of a Former County Judge*. (09/23/13).
- The judge's demeanor while presiding over court cases demonstrated a willful and/or persistent failure to maintain patience, courtesy, and dignity toward litigants, attorneys and others with whom he deals in an official capacity. The Commission determined that the judge's judicial style and his methods for controlling the courtroom and dealing with difficult litigants needed to be re-examined and modified to ensure compliance with the judge's duties under the Code. Additionally, the Commission found that the judge's handling of a contempt of court proceeding failed to comply with the law because the show cause notice did not provide sufficient detail of the alleged contemptuous conduct and because the judge left the contempt charges pending and unresolved indefinitely. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace*. (11/01/13).

- 
- The judge failed to follow the law when he attempted to discipline a lawyer utilizing the threat of contempt of court for the attorney's out-of-court statements posted on facebook. In his discussion with the attorney about the facebook comments, the judge failed to act in a patient, dignified, and courteous manner as expected of a judicial officer. Additionally, the judge failed to comply with the county's Indigent Defense Plan when he removed the public defender's office from 39 criminal cases without demonstrating "good cause shown on the record." [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Private Warning of a County Court at Law Judge.* (08/07/14).
  - The judge failed to maintain patience, courtesy, and dignity toward a defendant when she raised her voice and argued with the defendant, attempted to extract admissions of guilt from the defendant, and made demeaning comments to the defendant during the magistration process. [Violation of Canons 2A, 3B(2) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Former Municipal Court Judge.* (08/15/14).

**CANON 3B(8): A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.**

- The judge engaged in an improper *ex parte* communication with an attorney concerning a contested issue in a pending case, which resulted in the entry of a judgment in favor of that attorney without affording the opposing side the right to be heard. In reaching its decision, the Commission took into account the fact that the judge had been sanctioned previously for engaging in similar conduct. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct.] *Public Admonition of a District Court Judge.* (09/17/13).
- The judge routinely and persistently failed to comply with the law and displayed a lack of professional competence in the law when he (1) entered orders of deferred disposition that did not include an assessment of court costs as required by the Texas Code of Criminal Procedure, and failed to maintain court records, receipts, or bank statements to document the payment of court costs that were allegedly collected by court staff; (2) entered orders dismissing cases without notice to or a motion from the city prosecutor, as required by law; and (3) entered orders indicating that he was holding trials and finding defendants not guilty, without notifying the city prosecutor of trial settings and/or without giving the prosecutor an opportunity to appear. The judge's admitted practice of conducting his own independent investigation as to whether a citation lacked probable cause, which included engaging the defendant in a discussion concerning the merits of the case and contacting the officer that issued the citation, demonstrated a failure to understand the proper role of a judge as a neutral, detached magistrate. Because this was done in the absence of the prosecutor, it also violated the prohibition against improper *ex parte* communications and deprived the prosecution of its right to be heard. [Violations of Canons 2A, 3B(2), 3B(8), and 6C(2) of the Texas Code of Judicial Conduct.] *Public Reprimand of a Former Municipal Court Judge.* (05/15/14).
- The judge failed to comply with the law, failed to maintain professional competence in the law, and denied the parties their right to be heard when she failed to hold hearings in open court in contested family law matters in which the litigants had appeared to present evidence. The judge additionally failed to comply with her obligation to treat an attorney in a patient, dignified, and courteous manner during an in-chambers meeting. [Violation of Canons 2A, 3B(2), 3B(4), and 3B(8) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Court Judge.* (03/19/14).
- The judge failed to follow the law and failed to accord a defendant his right to be heard when she entered a default judgment in a criminal case due to the defendant's failure to appear for trial. [Violation of Canons 2A and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Former Municipal Court Judge.* (08/15/14).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she failed to schedule a trial after the defendant entered a not guilty plea and expressly requested a jury trial. Additionally, the judge failed to respond to the defendant's motion to compel discovery and request for a speedy trial, and further failed to respond to the prosecutor's request to set the defendant's motions for hearing, thereby

---

depriving the defendant of his right to be heard. The judge also engaged in an improper *ex parte* communication with the prosecutor. [Violation of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Municipal Court Judge*. (05/15/14).

- The judge failed to comply with the law, failed to maintain professional competence in the law, and failed to accord a traffic defendant her right to be heard when he denied the defendant her right to a jury trial, summarily found her guilty, and assessed a fine. Further, the judge's communications with the defendant, outside the presence of a prosecutor, regarding the merits of her case, including his efforts to discourage her from having a trial, constituted an improper *ex parte* communication with the defendant. In addition, the court's file in the defendant's case reflected that the court engaged in poor recordkeeping practices and failed to adequately document events in the defendant's case. The judge lacked professional competence not only regarding proper recordkeeping practices, but also regarding the procedures that must be followed under the Texas Code of Criminal Procedure before a defendant may be jailed for failure to pay a fine. [Violation of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning of a Former Municipal Court Judge*. (07/14/14).

**CANON 4A(1) and (2): A judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge; or interfere with the proper performance of judicial duties.**

- The part-time judge allowed other employment to interfere with his duties as a judge and failed to take reasonable steps to ensure that his court was open and accessible to the public; that court business was promptly and appropriately handled in his absence; and that monthly activity reports were timely filed with the appropriate entities as required by law. [Violations of Canon 4A(2) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Private Order of Additional Education of a Justice of the Peace*. (08/06/14).

**CANON 4C(2): A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.**

- The judge allowed her name and judicial title to be used to solicit funds and/or otherwise promote a fundraising event held on behalf of a non-profit organization that relied on fundraising to promote their charity work in the local community. The Commission also found that asking individuals to purchase tickets to attend a fundraising event and using court resources (email and computer) would necessarily fall within the type of "fundraising" generally prohibited by the canons. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge*. (11/13/13).

**CANON 4I(2): A judge shall file financial and other reports as required by law.**

- The judge failed to disclose expenditures made by others on behalf of her campaign and failed to file campaign finance reports as required by law. As an aggravating factor in reaching its decision, the Commission notes that the judge provided misleading and incomplete information in her sworn written responses to the Commission's initial inquiry, which needlessly delayed the investigation and impeded the resolution of this case. [Violations of Canon 2A and 4I(2) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Warning of a Former Justice of the Peace*. (05/16/14).

---

*Excerpt from Annual Report of the State Commission on Judicial Conduct (2014)*

For more information:

<http://www.scjc.state.tx.us/reports.asp>

# BLINDED BY THE LIGHT: THE ENFORCEMENT OF OUTDOOR MUNICIPAL LIGHTING ORDINANCES IN TEXAS

Ryan Kellus Turner

General Counsel and Director of Education, TMCEC

Prepare to be enlightened. Throughout the United States, more local governments are implementing outdoor lighting regulations. “Light trespass” refers to lighting directed into areas that it is not wanted (e.g., a neighbor’s yard or window). Proponents of outdoor lighting regulations claim that light pollution<sup>1</sup> is the product of outdoor lighting that is inadequately shielded. Inadequately shielded lighting, in turn, results in over illumination which not only wastes energy (“to the tune of \$2.2 billion per year in the United States alone”)<sup>2</sup> but can have detrimental effects on human health and psychology.<sup>3</sup> It also contributes to “skyglow,” the scattering of light in the atmosphere, which hinders urban star gazing.<sup>4</sup> Although not noticeable to the human eye, reduction of natural sky polarization impairs navigation and migration patterns of certain animals and has a negative impact on native ecosystems.<sup>5</sup>

Efforts to raise awareness about the value of dark star-filled skies and to encourage their protection and restoration have been the focus of the International Dark Sky Association (IDA).<sup>6</sup>

Since the nonprofit incorporated in 1988, the IDA’s principal approach has entailed promoting discussion of outdoor lighting practices that create less light pollution and assisting in collating lighting research on light at night’s effect on human health and ecology.

To promote awareness about the importance of such issues, the IDA in 2001 began its International Dark Sky Places (IDSPlaces) program that aims to protect “locations of exceptional night time visages for future generations.”<sup>7</sup>

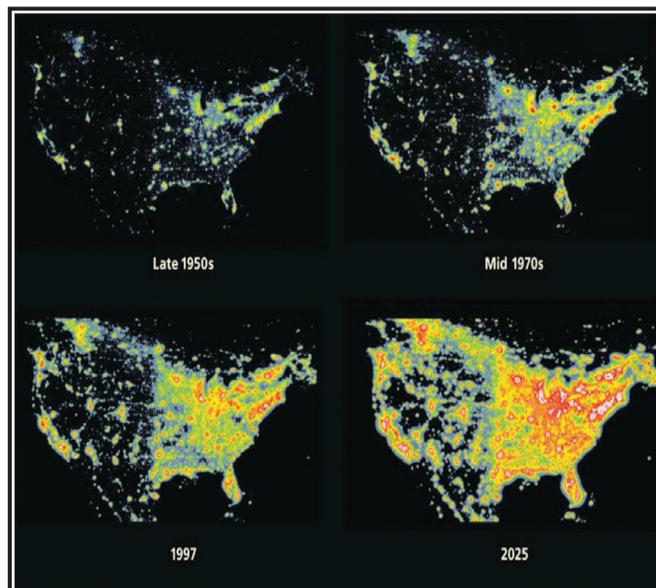
The IDSPlaces program recognizes parks, reserves, and communities. As of date, there are 20 International Dark Sky Parks, including Big Bend National Park (established in 2012). In 2014, two other Texas parks joined this exclusive list: Copper Breaks State Park and

Enchanted Rock State Natural Area. Currently, there are nine certified International Dark Sky Reserves. None are in the United States. The IDSPlaces reserves are “public and private lands possessing an exceptional and distinguished quality of starry nights and nocturnal environment that is specifically protected for its scientific, natural, educational, cultural, heritage and/or public enjoyment mission of a large peripheral area.”<sup>8</sup> There are eight International Dark Sky Communities. An IDSPlaces Community “excels in its efforts to achieve a communitywide lighting code, promote responsible lighting, dark sky stewardship, and exists as an example to surrounding communities on the possibilities available with the proper lighting.”<sup>9</sup> In August 2014, the City of Dripping Springs became the first city in Texas,<sup>10</sup> and one of only four cities in the United States, to be recognized as an IDSPlaces Community.

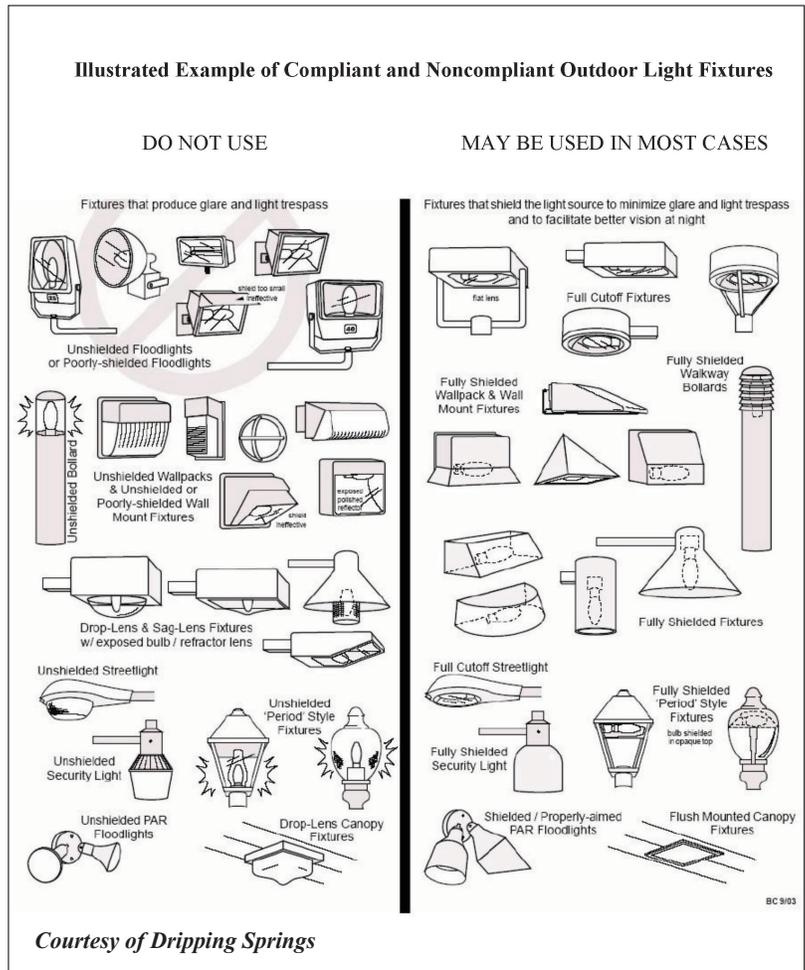
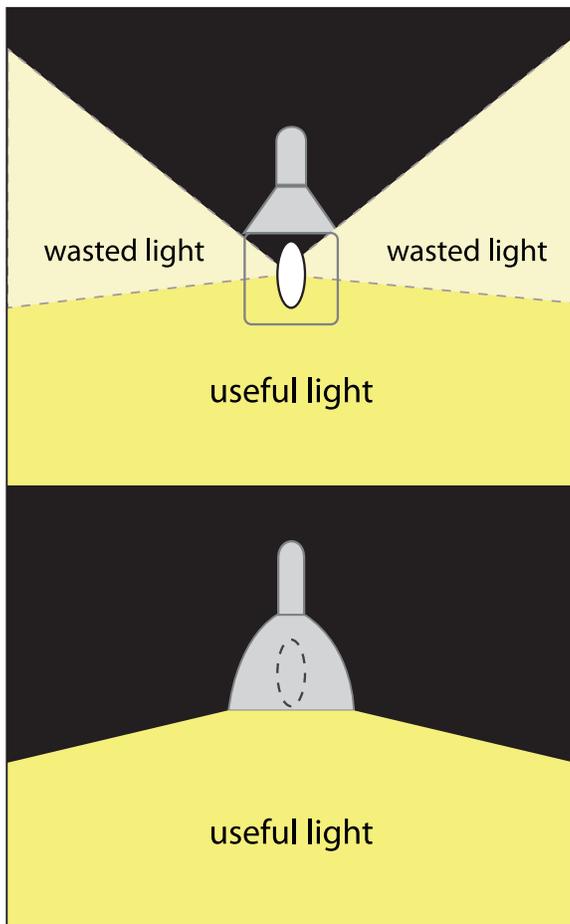
According to the IDA, 20 Texas cities have already adopted an outdoor lighting or light pollution ordinance.<sup>11</sup> In an era of increased conservation of resources, such lighting ordinances have the potential to become as common parlance as ordinances pertaining to water rationing. The general principles of such ordinances are: (1) Do not use more light than necessary to accomplish a desired purpose; (2) Do not use lights when not needed; and (3) Direct light only to where it is needed.

Because of their technical nature, and the cost of creating a lighting ordinance from scratch, model ordinances have been promulgated to aid and expedite local governments wanting to implement lighting restrictions.

The Pattern Outdoor Lighting Code (POLC) and Model Lighting Ordinance (MLO) are two competing model lighting ordinances. The MLO was developed by the IDA in conjunction with the Illuminating Engineering Society of North America.<sup>12</sup> The POLC, derived from the USA Pattern Code, was created by an astronomer employed by the U.S. Naval Observatory and city staff in Flagstaff, Arizona.<sup>13</sup> Both model ordinances are frequently relied upon by city attorneys and city planners.



## Shielding to Reduce Wattage!



Municipal lighting ordinances have the potential to be divisive and controversial. “Outdoor lighting ordinances can implicate strong sentiments regarding private property rights, safety, and the proper role of government. Public debates about exterior illumination can give rise to emotions on both sides regarding aesthetics, security, and notions about what it means to be a good neighbor.”<sup>14</sup> Yet, it is a sweeping generalization to say that all of such ordinances are prone to controversy. If perception is reality, how people perceive an outdoor lighting ordinance really depends on the specifics of the ordinance and the manner in which a municipality goes about formulating and implementing its provisions. The decision to adopt lighting regulations is not one to be made lightly. It is not a one-size-fits-all proposition. (What is right for Marfa may not be right for Mineola.) What is true for all cities, however, is that the adoption of a lighting ordinance requires careful consideration by local officials and assessment of local values.

This article does not examine the merits of whether or not a Texas municipality should adopt an outdoor municipal lighting ordinance. Rather, it focuses on considerations pertaining to enforcement.

## I. Enforcement Avenues

In Texas, a municipal government that chooses to promulgate a lighting ordinance has a number of avenues for enforcement. Each has distinct advantages and disadvantages. In simplest terms, enforcement is the act or process of compelling compliance with a law, mandate, command, decree, or agreement.<sup>15</sup>

Enforcement is not a singular construct. Rather, it is an overarching concept that encompasses varying components and meanings. *Extrajudicial enforcement* entails attempting to redress a perceived wrong by one’s own actions rather than through a normal legal process. This avenue of enforcement allows for collaboration. Examples of extrajudicial enforcement include public information and education campaigns, incentives, and assistance.<sup>16</sup> A number of articles on the internet explain the need and benefit for rethinking outdoor lighting.<sup>17</sup> Additionally, IDA has promulgated a practical guide ideal for neighborhood associations and community discussion. Some cities have retained lighting consultants to assist businesses with implementing effective outdoor lighting. In other places, like west Texas, people like Bill Wren, who works for the University of Texas McDonald Observatory, have worked with property owners and

---

businesses to address lighting issues without going to court. Most people, including businesses, want to be good neighbors and do not want light trespassing onto other people's property. Using private money, the McDonald Observatory in the last 20 years has donated more than 600 light shields to residents in municipalities near the observatory.<sup>18</sup> Similarly, drawing from other contexts, municipalities may opt to use incentive mechanisms to encourage the use of green infrastructure practices on private property. Such incentives include utility fee discounts, development incentives, grants, rebates, installation financing, awards, and recognition programs.<sup>19</sup>

On the other end of the enforcement spectrum is *law enforcement*: the detection and punishment of violations of the law. Despite its common association with police work, law enforcement is not limited to the enforcement of criminal laws. In contrast to collaboration, the preeminent feature of this enforcement avenue is confrontation within the parameters of an adversarial legal system. Criminal enforcement and civil enforcement are both examples of law enforcement.

### A. Criminal Enforcement

While a home-rule municipality, by virtue of its home-rule status, may adopt a lighting ordinance without reference to state statutes, a lighting ordinance may only be adopted by a general law municipality pursuant to the Local Government Code authorization of ordinances pertaining to zoning (Chapter 51), building codes (Chapter 214), signs (Chapter 216), municipal regulation of subdivisions and property development (Chapter 212), and nuisance abatement (Chapter 217). Such ordinances can contain offenses punishable by the imposition of a fine (i.e., Class C misdemeanors). Generally, the Penal Code prescribes the maximum punishment for a Class C misdemeanor as a fine not to exceed \$500.<sup>20</sup> Notably, however, all convictions not obtained from a prosecution under the Penal Code are classified as a "Class C misdemeanor" if the offense is punishable by fine only.<sup>21</sup> Thus, a defendant convicted of violating a lighting regulation which is part of a municipal zoning ordinance could face a fine as high as \$2,000 per offense.<sup>22</sup>

A municipal court, including a municipal court of record, has exclusive original jurisdiction within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction in all criminal cases that arise under a lighting ordinance of the municipality.<sup>23</sup>

Whether or not to adopt a lighting ordinance is generally a matter decided by a city council. Texas law provides some notable exceptions. A municipality located in a county, any part of which is located within 57 miles of a major astronomical observatory, the McDonald

Observatory, *shall* adopt ordinances regulating outdoor lighting, including in subdivisions (Subchapter B, Chapter 229, Local Government Code). An offense under that subchapter is a Class C misdemeanor (punishable by a fine not to exceed \$500). In addition to criminal prosecution, a municipality may also sue in any court to enjoin a violation.

Similarly, state law mandates that counties within 57 miles of a major astronomical at the McDonald Observatory *shall* adopt ordinances regulating outdoor lighting (Subchapter B, Chapter 240, Local Government Code). That subchapter has prospective application to the George Observatory, the Stephen F. Austin Observatory, to certain counties with at least five military bases, and adjacent counties. It also provides certain exceptions. An offense under that subchapter is a Class C misdemeanor. In addition to criminal prosecution, a county or district attorney may also sue in a district court to enjoin a violation of the subchapter. Other than in the limited geographic scope of Subchapter B, Chapter 240, Local Government Code, Texas counties have limited authority to regulate land use and structures (Title 7, Local Government Code).

Public education, collaboration, and consensus building are an important prerequisite to the passage of a municipal lighting ordinance. The importance of such efforts are amplified in municipalities seeking to criminally enforce such an ordinance. In absence of such efforts and community support, the merits of a lighting ordinance may be obscured and castigated as governmental overreach in the guise of overcriminalization.<sup>24</sup>

### B. Civil Enforcement

A municipality may bring a civil action for enforcement of an ordinance for the preservation of either public safety relating to the materials or methods used to construct a building or other structure or improvement, including *electrical wiring or apparatus*.<sup>25</sup> It may also bring a civil action for enforcement of an ordinance relating to the preservation of either public health or to fire safety, including provisions relating to materials, types of construction or design, interior configuration, and *illumination*.<sup>26</sup>

Jurisdiction and venue of such a civil action are in the district court or the county court at law of the county in which the municipality bringing the action is located.<sup>27</sup> On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the municipality may obtain against the owner, or owner's representative with control over the premises, an injunction that prohibits specific conduct that violates the ordinance and requires specific conduct that is necessary for compliance with the ordinance.<sup>28</sup> It is not necessary for the municipality

---

to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.<sup>29</sup> In a suit against the owner, or the owner's representative with control over the premises, the municipality may recover a civil penalty if it proves that the defendant was actually notified of the provisions of the ordinance, and after the defendant received notice of the ordinance provisions, the defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.<sup>30</sup> A civil penalty may not exceed \$1,000 a day for a violation of an ordinance.<sup>31</sup> However, a person is not subject to personal attachment or imprisonment for the failure to pay a civil penalty. A person may, however, be imprisoned for contempt of a valid court order and the municipality may utilize remedies and procedures for the collection of a judgment assessing civil penalties.<sup>32</sup>

From a governmental enforcement perspective, one of the more appealing aspects of civil enforcement of a lighting ordinance, discussed below, is that the government is not required to establish its case at trial beyond a reasonable doubt. This potential advantage for Texas cities should be weighed with the fact that civil enforcement will also entail increased costs and expenditure of time.

### **C. Quasi-Judicial Enforcement of Health and Safety Ordinances**

Quasi-judicial enforcement of health and safety ordinances requires a municipality, by ordinance, to implement the provisions of Subchapter C, Chapter 54 of the Local Government Code.<sup>33</sup> The scope of such quasi-judicial enforcement is limited, but similar to Section 54.012 of the Local Government Code, and encompasses preservation of public safety pertaining to construction, including electrical wiring or apparatus, and to building code or appearance of property in a municipality.<sup>34</sup> The governing body of the municipality may provide for the appointment of a building and standards commission, a quasi-judicial commission, consisting of at least five members, to hear and determine cases concerning alleged violations of ordinances.<sup>35</sup> The rules for hearings before quasi-judicial commissions are adopted by a majority of the commission members and must provide an opportunity for parties appearing before the commission to offer evidence and to present their own testimony.<sup>36</sup> Notice is required.<sup>37</sup> A commission panel may issue orders or directives to any peace officer to enforce and carry out the lawful orders or directives of a commission panel and determine the amount and duration of a civil penalty as provided by Section 54.017 of the Local Government Code. A determination is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the municipality for final judgment in accordance with the established penalty. A final judgment may be enforced by issuance of an abstract of judgment against all parties

found to be the owners of the subject property or in possession of that property.<sup>38</sup> Section 54.039 of the Local Government Code provides that any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision of a commission panel may, within 30 days after delivery of the final decision, present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. While Section 54.039(f) states that a district court's review shall be limited to a hearing under the substantial evidence rule, in *City of Dallas v. Stewart*,<sup>39</sup> the Texas Supreme Court held that de novo judicial review is required for all administrative decisions regulating public nuisances. In the context of quasi-judicial enforcement and the use of a building and standards commission, concerns about due process and the lack of judicial review has led commentators to conclude that *Stewart* has all but directly overturned the substantial evidence standard.<sup>40</sup>

Another twist on quasi-judicial enforcement is that a municipality, by ordinance, may adopt a civil adjudication process as an alternative to the quasi-judicial commission process. The civil adjudication process is for the enforcement of ordinances described by Section 54.032 of the Local Government Code. The alternative process must contain provisions relating to notice, the conduct of proceedings, permissible orders, penalties, and judicial review that are similar to the provisions of the quasi-judicial commission process.<sup>41</sup> State law provides a template for alternative procedures and for conducting the administrative procedures.

Neither the quasi-judicial commission nor the civil adjudication process affects the jurisdiction of the municipal court.<sup>42</sup> The Legislature, however, may not have intended for a municipal court to conduct the civil adjudication process, as it is the municipal court's role to enforce and order a hearing officer compelling the attendance of a witness or the production of a document.<sup>43</sup> While bestowing administrative functions on the municipal court may be appealing to city attorneys and decision makers at city hall, it may also pose legal and ethical problems.<sup>44</sup>

### **II. Territorial and Extraterritorial Jurisdiction of a Municipality**

A municipality may generally exercise its police powers only within the city's corporate or territorial limits unless such powers are expressly or implicitly extended by the Texas Constitution or by a statute to apply to areas outside the limits.<sup>45</sup>

It is the policy of the State of Texas to designate certain areas as the extraterritorial jurisdiction (ETJ) of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.<sup>46</sup> The ETJ of a municipality is the

---

unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:<sup>47</sup>

- (1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;
- (2) within one mile of those boundaries, in the case of a municipality with 5,000 inhabitants to 24,999 inhabitants;
- (3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;
- (4) within 3½ miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or
- (5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

Texas appellate courts have used the following four factors to determine whether a municipality can criminally enforce violations of ordinances occurring in the ETJ of a municipal court: (1) the type of municipality; (2) the type of ordinance alleged to have been violated (subject matter); (3) jurisdiction; and (4) venue.<sup>48</sup> Whether a municipality may criminally enforce a lighting ordinance in municipal court cannot be answered in the abstract but requires similar analysis in light of specific facts.

### III. Evidentiary and Proof Issues

Among the advantages of extrajudicial enforcement of Dark Sky principles is the avoidance of evidentiary and proof issues. Regardless of the chosen enforcement avenue, either criminal or civil, and regardless if the cause of action is brought by a local government or a private party, law enforcement, as previously defined, poses numerous challenges. As evidenced in the United Kingdom's passage of the Clean Neighbourhoods and Environment Act of 2005, the challenge of drafting comprehensive legislation pertaining to regulating exterior lighting is only matched, if not surpassed, by the challenges of enforcement.<sup>49</sup> The challenges appear particularly acute in criminal enforcement.

#### A. Witnesses

Witness testimony is the most common form of evidence in the American legal system. Regardless if a witness is a member of the public at large, a sympathetic or unsympathetic neighbor, or the complainant, a witness may not testify to a matter unless evidence is introduced that the witness has personal knowledge.<sup>50</sup> Under what circumstances will such witnesses have material personal knowledge (and even then, of what)? Light trespass? In absence of expert witness testimony, similar to noise ordinance cases involving barking dogs, it is easy to imagine adjudicated disputes over lighting becoming "he said, she said" matters.

Watts versus lumens? Lumens versus luminaries? Hooded versus shielded? If you think it's hard to explain these concepts to a city council, imagine explaining them to a jury. The scientific and technical nature of laws regulating exterior lighting is immensely complicated. This factor adds to the already difficult burden of the party with the burden of proof. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, or education may testify in the form of an opinion.<sup>51</sup> In the event of either civil or criminal litigation, who are such expert witnesses? Are they lighting consultants? Are they city staff?

For municipalities, the outcome of a litigated dispute involving exterior lighting is likely to hinge on advance planning. Coordinating city staff is essential. "Paper work" violations (e.g., failure to submit plans or evidence of compliance) will require sponsoring witnesses for documents and records. Similarly, performance standard violations (e.g., non-conforming light fixtures) will require a sponsoring witness to introduce photographs, recordings, and other admissible evidence.

#### B. Admissibility

In terms of free speech, implications of lighting regulations are well documented in the context of Christmas lights and "light art."<sup>52</sup> What have received less attention are the 4th Amendment implications of instances where inspection of a light fixture requires entry upon property. In *Camara v. Municipal Court for the City and County of San Francisco*, the Supreme Court of the United States held that nonconsensual administrative inspections of private residences amount to a significant intrusion upon the interest protected by the 4th Amendment.<sup>53</sup> A search warrant is required for authorities to engage in a home inspection.<sup>54</sup> Evidence seized in violation of the 4th Amendment is inadmissible. In Texas, the exclusion of such evidence is possible even when it is obtained by a private citizen or when a search warrant is predicated on information illegal by an independent third party.<sup>55</sup> Even in cases where no physical entry is made onto the property of an owner, rather suspicion or proof of illegal conduct is procured by using technology from a distance, 4th Amendment challenges have been made. In *Kyllo v. United States*, the Supreme Court invalidated the use of a thermal scanner to measure heat emissions from the home of a person suspected of growing marijuana in the basement of his home.<sup>56</sup> The Court held that if the government uses a device that is not in general public used to explore details of a private home that would previously have been unknown without physical intrusion, the surveillance is a 4th Amendment search and is presumptively unreasonable without a warrant.<sup>57</sup> Thermal imaging disclosures cannot form the basis for a valid

search warrant of a home without additional evidence to support probable cause.<sup>58</sup>

A related question pertains to the admissibility of evidence pertaining to light measurements. Individuals perceive light differently. Photometry is the measurement of visible light based on the response of the average human observer.<sup>59</sup> How that definition translates into technically correct quantification methods is no simple matter.<sup>60</sup> Photometric measurements are made with instruments called photometers. One type of photometer, a luminance meter, is used in a number of industries to test the brightness of displays, instrument panels, and lamp sources. No Texas appellate court has considered the propriety of a trial court taking judicial notice of photometry.<sup>61</sup> There is no case law governing the admissibility of measurements made by use of a luminance meter. This poses evidentiary issues similar to the admissibility of radar speed readings. Paraphrasing from case law pertaining to speed measurement, [i]t is up to the party with the burden of proof to show that he had some reasonable basis for believing that technology, properly applied, can give him reliable information, and that the person using the technology, in fact, applied the technology properly when making the measurement.<sup>62</sup> In absence of a training standard or accepted protocol for use of a luminance meter, other than showing compliance with the manufacturer's instructions, how are prosecutors to show that the testifying witness applied the technology properly when taking the measurement? If this cannot be established, it is possible that a luminance meter, like a portable breath test in a DWI case, may only be more useful in negotiations than at trial.

### C. Burden of Proof

Another factor which may influence how a municipality chooses to enforce an outdoor lighting ordinance is the burden of proof required at trial.

In criminal cases, the prosecution generally has the burden of proof. The offense alleged against the accused must be established by proof beyond a reasonable doubt. In a criminal case, the defendant is presumed innocent until proven guilty. The presumption of innocence means three things: (1) the defendant has no burden of proof whatsoever; (2) the prosecution must prove each and every element of the criminal offense beyond a reasonable doubt; (3) neither a judge nor jury may draw any inferences from the fact that the defendant is accused of a crime or fails to testify in his or her own defense.

In civil cases, the plaintiff generally has the burden of proof and is required to convince the trier of fact (whether judge or jury) of the plaintiff's entitlement to the relief sought. This means that the plaintiff must prove each element of the cause of action by a preponderance of the evidence.

### Conclusion

While governmental regulation of outdoor lighting is hardly a new concept, it is still relatively new to Texas. As more municipalities begin to consider the merits of adopting outdoor lighting ordinances, it is important that careful thought be given to the challenges of enforcement. For the time being, in absence of precedent, Texas cities choosing law enforcement (criminal, civil, or quasi-judicial) are likely to find themselves feeling their way through the dark. Notably, the challenges of law enforcement seem most pronounced in criminal enforcement. Accordingly, municipalities and city attorneys should not discount the merits of extrajudicial enforcement. Public education, collaboration, and consensus building are important prerequisites to the passage of a municipal lighting ordinance. However, sustaining such efforts is essential to long-term effective enforcement. Regardless of the avenue of enforcement, a municipality should not expect to successfully enforce an ordinance that is misunderstood or lacking popular support among residents.

<sup>1</sup> Light pollution includes light trespass, over illumination, glare, light clutter and sky glow. <http://www.texasida.org/BasicKnowledge.htm>. The term, "light pollution," has been criticized. Writing for the Independence Institute, a libertarian think tank based in Denver, Colorado, David B. Kopel and Michael Loatman claim that light pollution is a misleading term that should be banished from public discussion because light is a good, not a bad form of pollution. *Dark Sky Ordinances: How to Separate the Light from the Darkness*, Independence Institute (March 2006) at 2.

<sup>2</sup> International Dark Sky Association, *About IDA*, <http://darksky.org/about-us> (accessed January 5, 2015).

<sup>3</sup> Stephen M. Pauley, *Lighting for the Human Circadian Clock: Recent Research Indicates that Lighting has Become a Public Health Issue, Medical Hypotheses*, Vol. 63 at 588-596 (2004).

<sup>4</sup> IDA, "Visibility, Environmental, and Astronomical Issues Associated with Blue-Rich-White Outdoor Lighting," (May 2010).

<sup>5</sup> Kyba, Ruhtz, Fischer and Holker, *Lunar skylight polarization signal polluted by urban lighting*, *Journal of Geophysical Research*, 116 (December 17, 2011).

<sup>6</sup> *Supra* n. 2.

<sup>7</sup> International Dark Sky Association, *International Dark Sky Places*, <http://darksky.org/night-sky-conservation/34-ida/about-ida/142-idsplaces> (accessed January 5, 2015).

<sup>8</sup> International Dark Sky Association, *International Dark Sky Reserves*, <http://www.darksky.org/international-dark-sky-places/about-ids-places/reserves> (accessed January 5, 2015).

<sup>9</sup> International Dark Sky Association, *International Dark Sky Communities*, <http://www.darksky.org/international-dark-sky-places/about-ids-places/communities> (accessed January 5, 2015).

<sup>10</sup> International Dark Sky Association, *Dripping Springs Named the First International Dark Sky Community in Texas*, [http://darksky.org/assets/Night\\_Sky\\_Conservation/Communities/Dripping\\_Springs\\_press\\_release.pdf](http://darksky.org/assets/Night_Sky_Conservation/Communities/Dripping_Springs_press_release.pdf) (accessed January 5, 2015).

<sup>11</sup> Texas IDA, *Local Ordinances*, <http://www.texasida.org/LocalOrdinances.htm> (accessed January 5, 2015).

<sup>12</sup> Illuminating Engineering Society, *Joint IDA-IES Model Lighting Ordinance*, [http://www.ies.org/PDF/MLO/MLO\\_FINAL\\_June2011.pdf](http://www.ies.org/PDF/MLO/MLO_FINAL_June2011.pdf) (June 15, 2011).

<sup>13</sup> James Benya and Scott Kardell, *City of Malibu Lighting Ordinance: Comparison of POLC and MLO Ordinances*, IDA at 1 (August 12,

2014).

<sup>14</sup> Alan Bojorquez, *Municipal Regulation of Outdoor Lighting*, Better Lights for Better Nights Conference, International Dark Sky Association, Dripping Springs, Texas at 15 (August 15, 2014).

<sup>15</sup> *Black's Law Dictionary* (9th ed., West 2004).

<sup>16</sup> Lelde McCoy, *Developing Innovative Campaigns to Enhance Public Awareness of Government Initiatives*, *The Reputation Group* (February 2009).

<sup>17</sup> See, Jennifer Noonan, *bob vila, Be Dark Sky-Compliant When Lighting Up the Night*, <http://www.bobvila.com/articles/dark-sky-light/#.VJRz1BEk> <http://www.universetoday.com/107372/leds-light-pollution-solution-or-night-sky-nemesis/> (accessed January 5, 2015).

<sup>18</sup> Phone conversation with Bill Wren, December 19, 2014.

<sup>19</sup> Environmental Protection Agency, *Managing Wet Weather with Green Infrastructure Municipal Handbook Incentive Mechanisms*, [http://water.epa.gov/infrastructure/greeninfrastructure/upload/gimunicipalhandbook\\_incentives.pdf](http://water.epa.gov/infrastructure/greeninfrastructure/upload/gimunicipalhandbook_incentives.pdf) (June 2009).

<sup>20</sup> Section 12.23, Penal Code.

<sup>21</sup> Section 12.41(3), Penal Code.

<sup>22</sup> Section 54.001(b), Local Government Code.

<sup>23</sup> Section 29.003, Government Code.

<sup>24</sup> For a general discussion of overcriminalization, see, Paul Larkin, *Regulation, Prohibition, and Overcriminalization: The Proper and Improper Uses of the Criminal Law*, 42 Hofstra L. Rev. 745 (2014).

<sup>25</sup> Section 54.012(1), Local Government Code (emphasis added).

<sup>26</sup> Section 54.012(2), Local Government Code (emphasis added).

<sup>27</sup> Section 54.013, Local Government Code.

<sup>28</sup> Section 54.016(a), Local Government Code.

<sup>29</sup> Section 54.016(b), Local Government Code.

<sup>30</sup> Section 54.017(a), Local Government Code.

<sup>31</sup> Section 54.017(b), Local Government Code.

<sup>32</sup> Section 54.019, Local Government Code.

<sup>33</sup> Section 54.031, Local Government Code.

<sup>34</sup> Section 54.032, Local Government Code.

<sup>35</sup> Section 54.033, Local Government Code.

<sup>36</sup> Section 54.034, Local Government Code.

<sup>37</sup> Section 54.035, Local Government Code.

<sup>38</sup> Section 54.040, Local Government Code.

<sup>39</sup> *City of Dallas v. Stewart*, 361 S.W.3d 562 (Tex. 2012).

<sup>40</sup> Alex Cameron, "Due Process and Local Administrative Hearings Regulating Public Nuisances: Analysis and Reform", 43 *St. Mary's L. J.* 619, 650 (2012).

<sup>41</sup> Section 54.043, Local Government Code.

<sup>42</sup> Section 54.042, Local Government Code.

<sup>43</sup> Section 54.044 (c), Local Government Code.

<sup>44</sup> Cathy Riedel, "Civil Jurisdiction in Municipal Courts: Evolving or Mutating?", *The Recorder* (August 2012).

<sup>45</sup> *Milestone Potranco Dev., Ltd. v. City of San Antonio*, 298 S.W.3d 242, 244 (Tex. App. — San Antonio 2009, pet. denied); *City of Austin v. Jamail*, 662 S.W.2d 779, 782 (Tex. App.—Austin, 1983, writ dismissed w.o.j.); *City of Westlake Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 686 (Tex. Civ. App.—Waco 1980, no writ); *Sweetwater v. Hammer*, 259 S.W. 191, 195, (Tex. Civ. App.—Fort Worth 1923, writ dismissed).

<sup>46</sup> Section 42.001, Local Government Code.

<sup>47</sup> Section 42.021, Local Government Code.

<sup>48</sup> Lawrence Provins, "For City Attorneys: Enforcing Municipal Ordinance Violations in the Extraterritorial Jurisdiction by Prosecution in Municipal Court," *The Recorder* at 8 (July 2006).

<sup>49</sup> Martin Morgan Taylor, "Light Pollution and Nuisance: The Enforcement Guidance for Light as Statutory Nuisance," *Journal of Planning and Environment Law* pp. 1114-1127 (August 2006).

<sup>50</sup> Tex. R. Evid. 602.

<sup>51</sup> Tex. R. Evid. 702.

<sup>52</sup> *Supra*, note 49 at 1118-1119.

<sup>53</sup> *Camara v. Municipal Court of San Francisco*, 387 U.S. 523 (1967).

<sup>54</sup> *Id.* at 533.

<sup>55</sup> *State v. Johnson*, 939 S.W.2d 586 (Tex. Crim. App. 1996).

<sup>56</sup> *Kyllo v. U.S.*, 533 U.S. 27 (2001).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Howstuffworks, *Photometry*, <http://science.howstuffworks.com/photometry-info.htm> (accessed January 5, 2015).

<sup>60</sup> EDU.photonics.com, *Photometry*, <http://www.photonics.com/EDU/Handbook.aspx?AID=25119> (accessed January 5, 2015).

<sup>61</sup> Once a scientific principle is generally accepted in the pertinent professional community and has been accepted in a sufficient number of trial courts through adversarial *Daubert/Kelly* hearings, subsequent courts may take judicial notice of the scientific validity (or invalidity) of that scientific theory based upon the process, materials, and evidence produced in those prior hearings. *Hernandez v. State*, 116 S.W.3d 26, 29 (Tex. Crim. App. 2003).

<sup>62</sup> *Hall v. State*, 297 S.W.3d 294, 301 (Tex. Crim. App. 2009).

## New Municipal Judges Continue to be Supported by TMCEC Mentor Program

Mark Goodner

Program Attorney & Deputy Counsel

In an effort to optimize the judicial and ethical performance of newly appointed municipal judges, TMCEC launched a new Judicial Mentor Program in the summer of 2012. The goal is to pair new, non-attorney judges with experienced municipal judges, providing new judges another option for information, support, and one-to-one guidance.

Beginning with the July 2012 New Judges Program, each new judge attending a New Judges Seminar has been paired with an experienced judge who has volunteered to serve as a mentor. Well over 100 new judges have been paired with mentors selected from a pool of 25-30 experienced judges. Many mentors take the opportunity to come to Austin and meet with the judges at that first New Judges Seminar and later plan to meet with them at future regional programs. Others offer mentorship through trips to visit the new judges in their courts or through phone and email support.

"This program is great, and I continue to hear from my past mentees. The program has consistently allowed my mentees not to reinvent the wheel and feel free to bring up questions to me whenever a particular problem arises. Also, I have learned from my mentees' questions a lot of legal procedures that I was not aware of since our courts are very different. Several of the judges I have interacted with through the program are also Justices of the Peace as well so I have learned from them concerning issues they face that I don't see in municipal court."

Edward J. Spillane III  
Presiding Judge  
College Station Municipal Court

The mentor program has been a great new service to our new judges. We are so thankful for the time and effort put forth by our mentors, and we look forward to many more successful years of the TMCEC mentor program.



**Fair Defense Act** *continued from pg. 1*

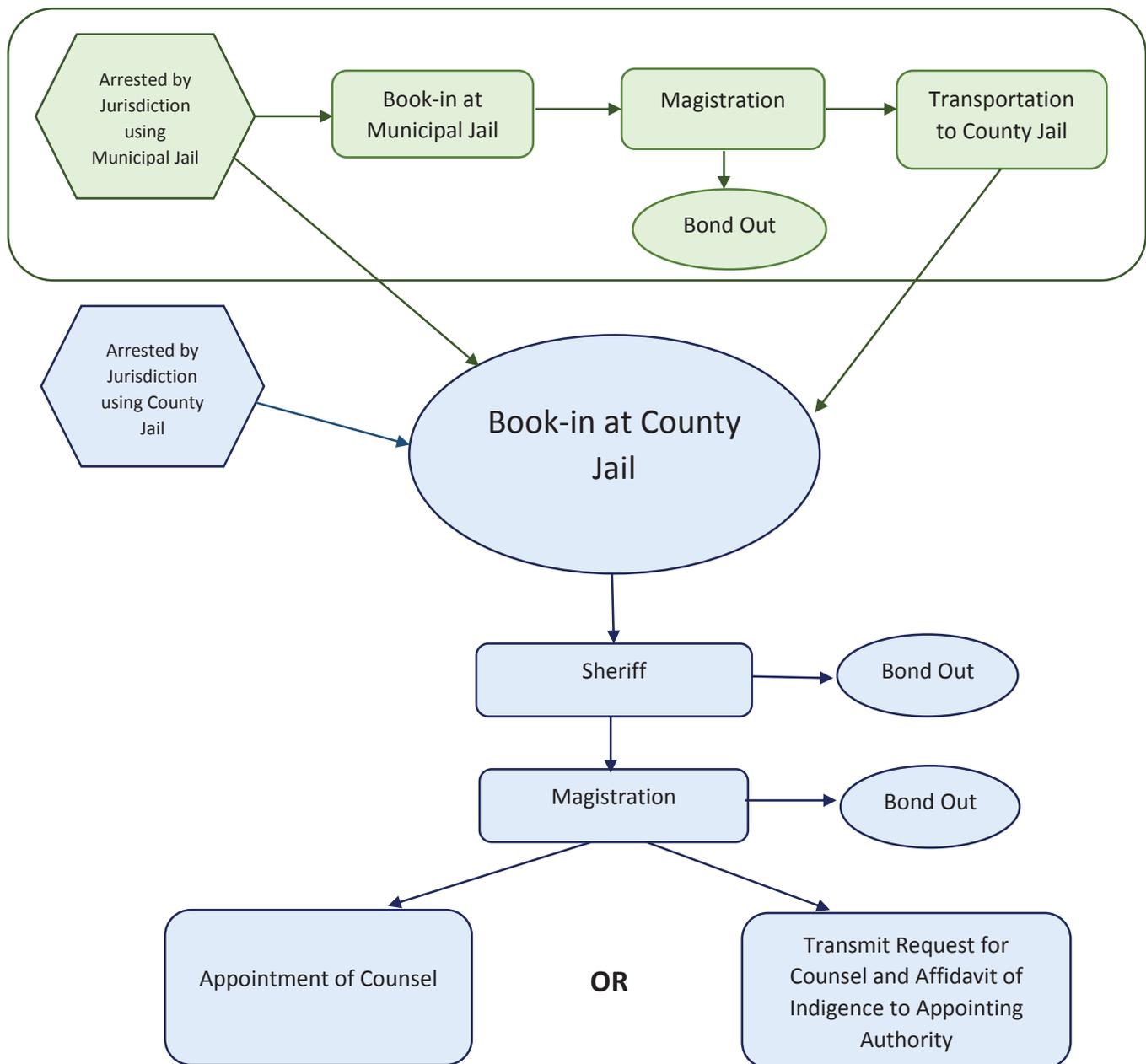
The Fair Defense Act established the Task Force on Indigent Defense to oversee the provision of indigent defense services in Texas. The Task Force was renamed the Texas Indigent Defense Commission (Commission) in 2011. The Commission is a permanent standing committee of the Texas Judicial Council and is administratively attached to the Office of Court Administration.

The Commission is led by the Honorable Sharon Keller,

Presiding Judge, Court of Criminal Appeals and is composed of five members appointed by the Governor and eight ex officio members. The Commission’s programs and policies are implemented by eleven full-time staff members.

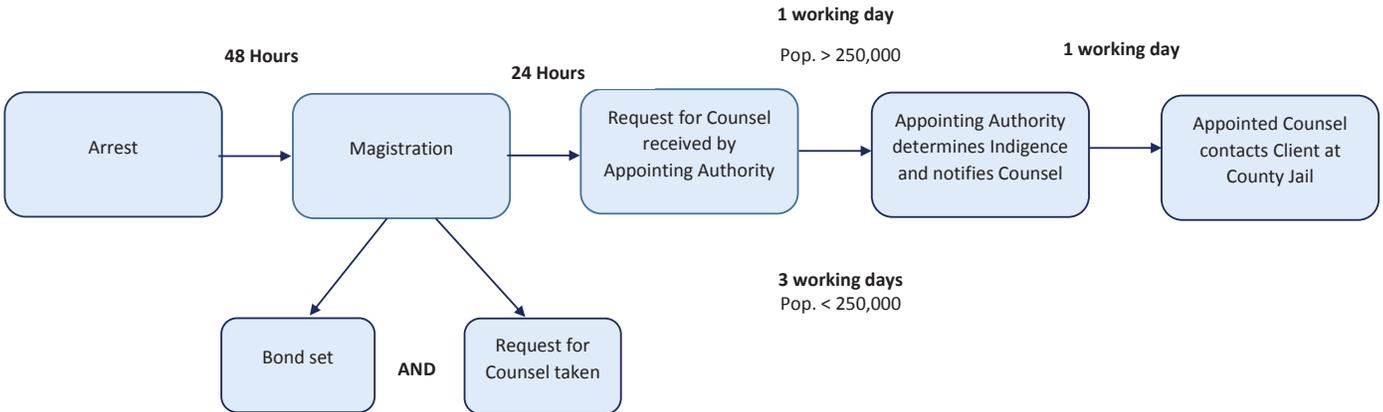
Since 2001, the Fair Defense Act has gone through numerous revisions to improve its scope and comprehensiveness as well as the quality of indigent defense services provided throughout the state. In the 2013 Legislative Session, a few new key provisions were added, including a requirement that attorneys report to the Commission the percentage of their practice time dedicated

**Figure 1. Defendant Case Flow from Arrest to Magistration**

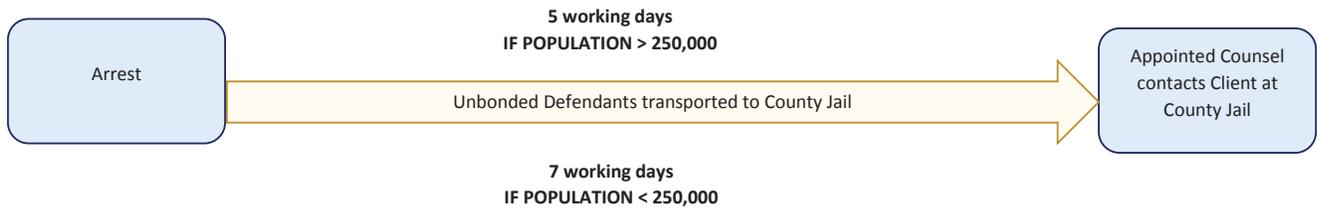


**Figure 2. Timeline Specified by the Fair Defense Act**

**Paperwork Timeline**



**Defendant Timeline**



to indigent defense in each county in each fiscal year.

**Caseflow and Timelines**

To ensure indigent defendants receive counsel within a specified timeframe, the Fair Defense Act assigns responsibility to actors at each phase of pretrial case processing. Figure 1 illustrates defendant caseflow from arrest to the appointment of counsel. Figure 2 highlights the time available under the Fair Defense Act to complete each phase of processing. Though procedures may vary from county to county, in every instance magistrates play an essential role in meeting requirements of the law.

Pursuant to Article 14.06 of the Texas Code of Criminal Procedure, the arresting officer must ensure that the accused is brought before a magistrate no later than 48 hours after the arrest.<sup>4</sup> In a warrant arrest, if the magistrate signing the order is unavailable, or if it is necessary to provide the warnings described by Article 15.17 of the Code more expeditiously, the accused may be brought before a different magistrate in the county where the arrest was made or a magistrate in any county in the state. The arrested person may also be presented to the magistrate by means of an electronic broadcast system.<sup>5</sup>

If the arrest offense is a Class C misdemeanor, the peace officer may issue a citation instead of bringing the accused before the magistrate immediately. The citation

must contain written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, the offense charged, and an admonishment, in boldfaced, underlined, or capital letters, stating that a conviction for a misdemeanor involving violence may make it unlawful for the defendant to possess or purchase a firearm. For Class A or B misdemeanors under Section 481.121 (b)(1) or (2) of the Health and Safety Code, if the person resides in the county where the offense occurred, a peace officer may also issue a citation containing written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.<sup>6</sup>

In compliance with the Fifth Amendment right to interrogation counsel, arresting officers must give *Miranda* warnings before beginning any custodial questioning.<sup>7</sup> The Sixth Amendment right to trial counsel is triggered at judicial arraignment or magistrations.<sup>8</sup> As long as arresting officers first read defendants their *Miranda* rights and obtain a waiver of counsel, police can still interrogate defendants after the Sixth Amendment right to trial counsel attaches.<sup>9</sup>

**Article 15.17 Hearings**

Though the term “magistration” is not actually found in the law, it is, however, commonly used to describe the Article 15.17 hearing. A magistration is distinct from an

---

“arraignment,” though the expressions are sometimes incorrectly used interchangeably. Article 26.02 of the Code of Criminal Procedure specifies that an arraignment takes place for the purpose of fixing the identity of the accused and taking his or her plea. An Article 15.17 Hearing is more accurately described as an “initial appearance” or “probable cause hearing.”<sup>10</sup>

### **When Right to Counsel Attaches**

Texas law requires that any individual detained in custody be given an opportunity to appear before a magistrate promptly after arrest. Guidelines for this post-arrest proceeding are specified in Article 15.17 of the Code of Criminal Procedure—a vital component of due process for the protections it provides against unjust detention.

In 2008, the U.S. Supreme Court in *Rothgery v. Gillespie County*, held that adversarial judicial proceedings begin at the time an arrestee appears before a magistrate for a hearing pursuant to Article 15.17 of the Texas Code of Criminal Procedure even though a prosecutor may not be present at the hearing or even aware of the charges or the arrest itself.<sup>11</sup>

Walter Rothgery requested counsel at magistration and was released on bond shortly thereafter. In proceedings below, the U.S. Court of Appeals for the Fifth Circuit held that the right to counsel does not attach until a prosecutor becomes involved in criminal proceedings. The Supreme Court rejected the Fifth Circuit’s reasoning and decided that magistration, not the filing of an indictment or some other form of prosecutorial involvement, initiates adversarial judicial proceedings.

Although the Supreme Court’s opinion in *Rothgery* speaks in general terms of “the consequent state obligation to appoint counsel within a reasonable time” once the right to counsel attaches and a request for assistance is made, the Court did not specify a constitutional time frame after magistration within which counsel must be appointed. The Court left it to the lower courts to resolve whether the delay in appointing counsel to represent Mr. Rothgery was unreasonable under the specific facts of his case.

The Texas Code of Criminal Procedure provides that “if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts’ designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel as soon as possible,” but not later than three working days in counties with populations under 250,000 or one working day in counties with populations of 250,000 or more.<sup>12</sup> Article 1.051(j) of the Code further states that “if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant’s first court

appearance or when adversarial judicial proceedings are initiated, whichever comes first.”

### **Prompt Probable Cause Determination**

Though Article 15.17 does not explicitly mention probable cause determinations, appellate courts have held that this is an essential function of the magistrate. If an arrest is by a warrant, no further inquiry is needed.<sup>13</sup> However, when an arrest is conducted without a warrant, the magistrate must make an independent judicial determination that there is probable cause to detain the defendant or require a bond prior to release.<sup>14</sup>

The magistrate’s review of probable cause should be based on sworn testimony or a written affidavit presenting the facts of the case and the circumstances of the arrest.<sup>15</sup> A common sense approach considering all the information available should be used to determine whether there is a fair probability that the arrestee committed the offense with which she is charged.<sup>16</sup>

Article 17.033 of the Code of Criminal Procedure clarifies the appropriate procedure in the event that the magistrate fails to find probable cause for detention or is presented insufficient sworn evidence to make a determination. A person being held for a misdemeanor offense must be released on a bond not to exceed \$5,000 within 24 hours after arrest.<sup>17</sup> If the offense is a felony, then the right to be released matures at 48 hours and the bond may not exceed \$10,000.<sup>18</sup> Individuals unable to make a cash or surety bond must be released on a personal bond.<sup>19</sup> Furthermore, until probable cause is established, an individual cannot be held to the terms of any bond.

The only means to extend these detention timelines is if the prosecutor demonstrates sufficient reason why it has not been possible to establish probable cause. If adequate justification is presented, the magistrate may postpone release for up to 72 hours from arrest while additional evidence to detain the defendant is established.<sup>20</sup>

### **The Warnings**

Perhaps the most important function of the magistrate is to make sure defendants are informed of and understand their rights. Though magistrate’s warnings do not track verbatim the Miranda decision or Texas Code of Criminal Procedure Article 38.22 of the Texas Code of Criminal Procedure, they cover the same basic protections.<sup>21</sup> Arrested individuals must be informed of:

- the charges against him or her and any affidavit on file;
- the right to remain silent;
- the right not to make a statement, and that any statement made can and may be used against the individual in court;
- the right to stop any interview or questioning at any

- time; and
- the right to have an examining trial (felonies only).

Specifically regarding access to legal representation, magistrates must inform arrestees of:

- the right to have an attorney present prior to and during any interview or questioning by peace officers or attorneys representing the State;
- the right to hire an attorney;
- the right to request appointment of counsel if the person cannot afford counsel; and
- procedures for requesting appointment of counsel.

In addition to informing individuals of these rights, magistrates must also provide reasonable assistance to ensure arrestees are able to complete the forms requesting appointed counsel at the Article 15.17 proceeding. This requirement was added as a provision of the Fair Defense Act.

Upon giving these warnings, the magistrate should also ask if the arrestee understands these rights. If the arrestee indicates a lack of understanding, the magistrate has a duty to clarify the meaning.

### Transfer of Requests for Court Appointed Counsel to the Appointing Authority

Within 24 hours of the magistration hearing, a request for counsel, including information concerning the arrested person's financial resources must be received by the person(s) designated in the Local Indigent Defense Plan to determine indigence and appoint counsel.<sup>22</sup> In some counties this responsibility is delegated directly to the magistrate. If the magistrate is the appointing authority, the determination of indigence and assignment of legal representation occurs during the 15.17 hearing. By eliminating the need to transfer the request for counsel paperwork to a different appointing authority, first contact with an attorney is expedited by as much as two to four days (depending on county population).

If the magistrate is not authorized to appoint counsel, he or she should forward the completed paperwork to the appropriate designee without unnecessary delay, and not later than 24 hours after request for appointment. The court may authorize an indigent defense coordinator, court coordinator or, more rarely, the judges themselves to review eligibility and assign counsel. Both approaches have advantages and disadvantages.<sup>23</sup> Direct appointment by the magistrate provides defendants faster access to an attorney, while **transfer of requests** to an agent other than the magistrate allows counties more time to confirm defendants' eligibility by validating self-reported financial information.

### Making the Record

Next, Article 15.17 specifically requires that a magistrate record the following events: (1) the magistrate informing the person of the person's right to request appointment of counsel; (2) the magistrate asking the person whether the person wants to request appointment of counsel; and (3) whether the person requested appointment of counsel. These records are beneficial to state and local governments in monitoring conformance with timeframes specified in the Fair Defense Act.<sup>24</sup> Whether a magistrate is operating in court of record or not, a record must be made. Failure to do so may subject the county to loss of state indigent defense funds.

### Conclusion

The proper implementation of the Fair Defense Act is dependent on a wide range of officials properly completing their duties. None is more important than the role of the magistrate. A magistrates' record provide a vital trail of accountability. What transpires at the initial Article 15.17 hearing has the potential to impact every aspect of the case there forward. The magistrate serves as the gatekeeper in ensuring that the statutory and constitutional right of court appointed counsel is done promptly and in a manner that promotes public trust and confidence in our justice system.

<sup>1</sup> Article 1.051(c), Code of Criminal Procedure.

<sup>2</sup> Texas Appleseed, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* (2000).

<sup>3</sup> *Id.*

<sup>4</sup> Article 14.06, Code of Criminal Procedure.

<sup>5</sup> Article 15.17(a), Code of Criminal Procedure.

<sup>6</sup> Article 14.06 (b) and (c), Code of Criminal Procedure.

<sup>7</sup> *Pecina v. State*, 361 S.W.3d 68, 71 (Tex. Crim. App. 2012).

<sup>8</sup> *Id.*

<sup>9</sup> *Montejo v. Louisiana*, 556 U.S. 778 (2009).

<sup>10</sup> W. Clay Abbott, "Magistrations Under Article 15.17, C.C.P.," *The Recorder*, (August 2000).

<sup>11</sup> *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).

<sup>12</sup> Art. 1.051(c), Code of Criminal Procedure.

<sup>13</sup> *Gerstein v. Pugh*, 420 U.S. 103 (1975).

<sup>14</sup> *Sanders v. City of Houston*, 543 F. Supp. 694 (S.D. Tex. 1982), aff'd 741 F. 2d 1379 (5th Cir. 1984).

<sup>15</sup> Article 1, Section 11, Texas Constitution.

<sup>16</sup> *Illinois v. Gates*, 462 U.S. 213 (1983); *Eisenhauer v. State*, 754 S.W.2d 159 (Tex. Crim. App. 1988).

<sup>17</sup> Art. 17.033(a), Code of Criminal Procedure.

<sup>18</sup> Art. 17.033(b), Code of Criminal Procedure.

<sup>19</sup> *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

<sup>20</sup> Art. 17.033(c), Code of Criminal Procedure.

<sup>21</sup> *Clark v. State*, 627 S.W.2d 693, 704 (Tex. Crim. App. 1982) (holding that compliance with Article 15.17 of the Texas Code of Criminal Procedure ensures compliance with Miranda requirements).

<sup>22</sup> *Id.*

<sup>23</sup> The Public Policy Research Institute, Texas A&M University, *Study to Assess the Impacts of the Fair Defense Act on Texas Counties*, 35-38 (January 2005).

<sup>24</sup> Article 15.17(f) of the Code of Criminal Procedure provides that a record required under this article may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).



# RESOURCES FOR YOUR COURT

## NATIONAL CENTER FOR STATE COURTS

The National Center for State Courts (NCSC) is an independent, non-profit court improvement organization that serves as a clearinghouse for research information and comparative data to support improvement in judicial administration in all state courts. State assessments pay for the distribution of information from knowledge analysts and online sources, available free of charge to state trial and appellate courts and their administrative offices.

Go to the NCSC website [www.ncsc.org] if you are researching topics, such as court performance standards, commercial drivers, court security, courthouse design & finance, emergency preparedness/disaster recovery, court interpreters, and more.

Or, attend the wide range of courses and conferences offered at their headquarters in Williamsburg, Virginia, as well as in conference centers and hotels across the United States. The training arm of NCSC is called the Institute for Court Management. They offer two certification programs. Go to <http://www.ncsc.org/Education-and-Careers/ICM-Courses.aspx> for more information.

All of NCSC's services — research, information services, education, consulting — are focused on helping courts plan, make decisions, and implement improvements that save time and money, while ensuring judicial administration that supports fair and impartial decision-making.

The screenshot shows the NCSC website homepage. At the top left is the NCSC logo with the tagline "Trusted Leadership. Proven Solutions. Better Courts." and "Est. 1971". To the right is a search bar and a "MY CENTER LOGIN" section with fields for "Username" and "Password". Below the header is a navigation menu with links for "Newsroom", "Publications & Library", "About Us", "Donate", and "NCSC International". A secondary menu lists "INFORMATION & RESOURCES", "SERVICES & EXPERTS", "EDUCATION & CAREERS", "CONFERENCES & EVENTS", and "COMPANION SITES". The main content area features a large article titled "The Modern Grand Jury" with a photo of a state capitol building. To the right is a "HOW CAN WE HELP YOU?" section with filters for "TOPIC" and "STATE", and buttons for "FIND AN EXPERT" and "FIND A COURSE". Below this are sections for "ASSOCIATIONS & PARTNERS", "GET NEWSLETTERS", and "MY CENTER". At the bottom, there are three columns for "THIS WEEK AT NCSC" with news items: "CCS kicks off pre-trial programs in Mo.", "CCS helping Colo. court reorganize operations", and "Researcher hosting mental health webinar". A fourth column highlights "Trends in State Courts 2014".

# NATIONAL ASSOCIATION FOR COURT MANAGEMENT

The National Association for Court Management (NACM) has over 1,700 members from the United States, Canada, Australia, and other countries. NACM is the largest organization of court management professionals in the world with members from all levels and types of courts. NACM provides court management professionals the opportunity to increase their proficiency while working with colleagues to improve the administration of justice (from NACM website: <https://www.nacmnet.org/about/index.html>).

NACM will be hosting its mid-year meeting outside Bastrop, Texas at the Lost Pines Resort on February 8-10, 2015. To view the agenda and register, go to <http://nacmconference.org/>. Texas municipal judges and court support personnel can save \$50 on registration fees if they register as a member of the “Texas Municipal Courts” group. The name of the group must be written on the registration form to receive the discount. Quite a few of us plan to be there. An interesting agenda is planned, including presentations by Judge John Cleland and Rebecca Love Kourlis. Judge Cleland, Senior Judge on the McKean County Court of Common Pleas, will speak on Public Trust and Confidence. In 2011, Judge Cleland was assigned to the trial of former Penn State assistant football coach, Jerry Sandusky. Justice Kourlis is a former justice of the Colorado Supreme Court and executive director of the Institute for the Advancement of the American Legal System. Kourlis will provide a view to how courts have changed over the years and discuss qualities of successful courts – and court employees.

**NA CM** MIDYEAR CONFERENCE  
FEBRUARY 8-10, 2015

ATTENDEES REGISTRATION CONFERENCE AGENDA SPEAKERS EXHIBIT/SPONSOR INFO

FOUNDED IN TRADITION,  
FOCUSED ON THE FUTURE

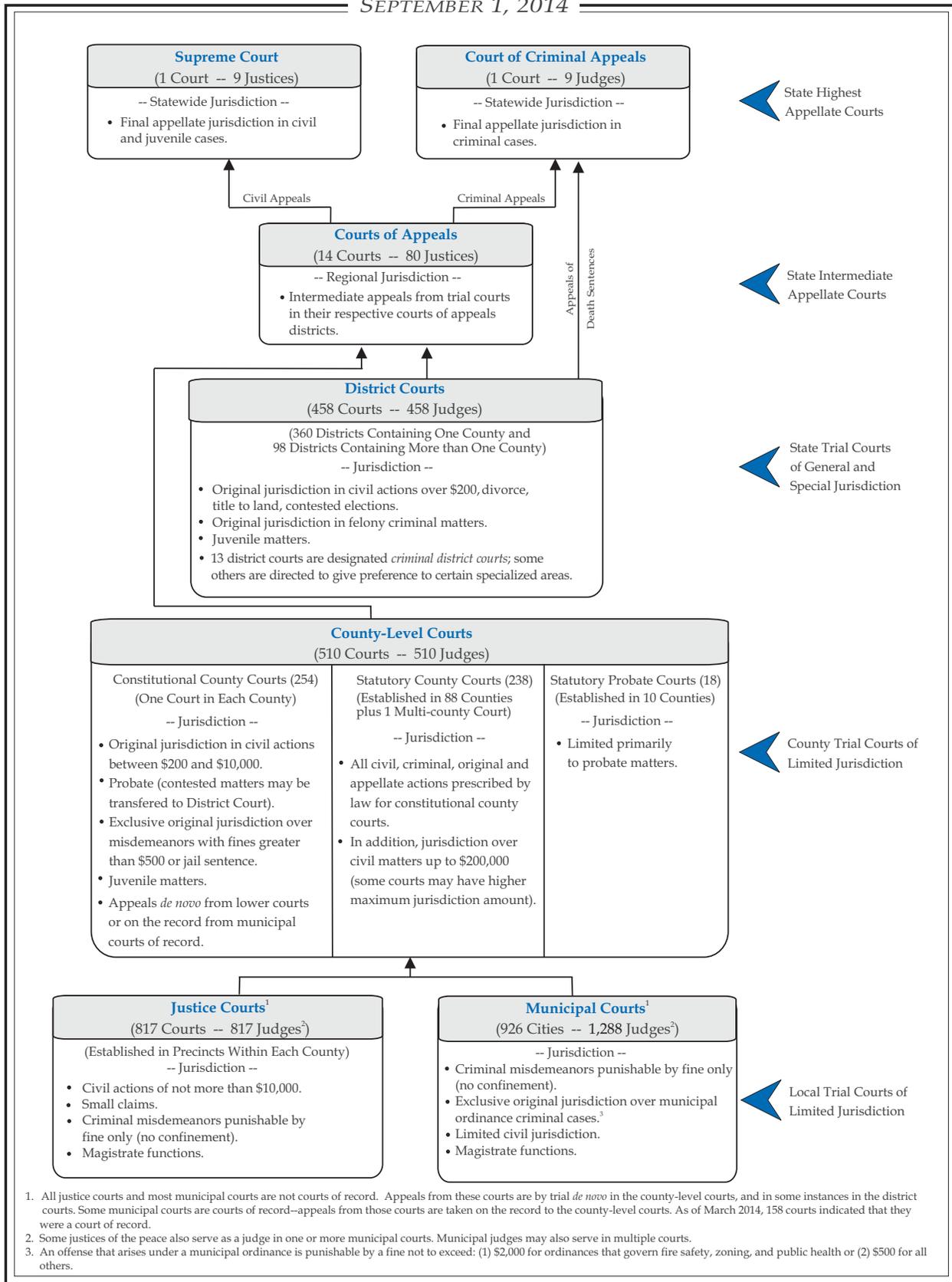
FOUNDED IN TRADITION, FOCUSED ON THE FUTURE  
FEBRUARY 8-10 LOST PINES, TEXAS

How has the world of court administration been impacted by case processing and technological advancements, workforce demographics, societal expectations, and leadership? Join your colleagues to explore the impact these elements have had – and will continue to have – on our profession. Education sessions will focus particular attention on the recently revised NACM Core Competencies (The Core).

Two outstanding keynote speakers will join us at the 2015 Midyear Conference in Texas. On Monday, **Judge John Cleland**, senior judge on the McKean County Court of Common Pleas, will speak on Public Trust and Confidence. Judge Cleland became a household name in 2011 when he was assigned to the trial of

# COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 2014



From the OCA Annual Statistical Report, 2014, [http://www.txcourts.gov/media/683427/1-Court-Structure-Chart-for-publication9\\_1\\_14b.pdf](http://www.txcourts.gov/media/683427/1-Court-Structure-Chart-for-publication9_1_14b.pdf)

## Profile of Appellate and Trial Judges\*

As of September 1, 2014

	Supreme Court	Court of Criminal Appeals	Court of Appeals	District Courts	Criminal District Courts	County Courts at Law	Probate Courts	County Courts	Justice Courts	Municipal Courts
<b>NUMBER OF JUDGES:</b>										
Number of Judge Positions	9	9	80	445	13	238	18	254	817	1,288
Number of Judges	9	9	79	443	13	237	18	253	813	1,277
Number of Vacant Positions	0	0	1	2	0	1	0	1	2	11
Number of Municipalities w/ Courts	--	--	--	--	--	--	--	--	--	926
Cities with No Courts	--	--	--	--	--	--	--	--	--	250
<b>AGE OF JUDGES:</b>										
	(n = 9)	(n = 9)	(n = 78)	(n = 439)	(n = 13)	(n = 224)	(n = 16)	(n = 235)	(n = 777)	(n = 1,179)
Mean	57	61	57	55	57	61	57	62	59	60
Oldest	69	72	75	76	70	84	70	86	89	96
Youngest	44	50	39	34	43	37	43	37	29	24
<b>RANGE OF AGE:</b>										
Under 25	0	0	0	0	0	0	0	0	0	1
25 through 34	0	0	0	1	0	0	0	0	7	21
35 through 44	1	0	6	40	1	22	1	8	58	134
45 through 54	3	1	18	135	4	73	1	32	162	281
55 through 64	3	2	39	173	5	87	7	97	288	367
65 through 74	2	6	14	86	3	35	7	86	213	289
Over 75	0	0	1	4	0	7	0	12	49	86
<b>GENDER OF JUDGES:</b>										
	(n = 9)	(n = 9)	(n = 79)	(n = 443)	(n = 13)	(n = 237)	(n = 18)	(n = 253)	(n = 813)	(n = 1,277)
Males	7	4	45	309	8	163	12	228	515	796
Females	2	5	34	134	5	74	6	25	298	481
<b>ETHNICITY OF JUDGES:</b>										
	(n = 9)	(n = 9)	(n = 78)	(n = 428)	(n = 12)	(n = 227)	(n = 16)	(n = 243)	(n = 749)	(n = 1,127)
African-American	0	0	2	19	2	8	0	1	26	71
American Indian or Alaska Native	0	0	0	1	0	0	0	0	3	7
Asian or Pacific Islander	0	0	0	4	0	2	0	1	0	9
Hispanic/Latino	1	1	10	70	1	43	2	20	144	199
White (Non-Hispanic)	8	8	66	331	9	173	14	221	575	832
Other	0	0	0	3	0	1	0	0	1	9
<b>LENGTH OF SERVICE:</b>										
	(n = 9)	(n = 9)	(n = 79)	(n = 443)	(n = 13)	(n = 237)	(n = 18)	(n = 253)	(n = 813)	(n = 1,554)
Average	7 Yr 5 Mo	14 Yr 4 Mo	8 Yr 10 Mo	9 Yr 10 Mo	6 Yr 1 Mo	10 Yr 11 Mo	13 Yr 5 Mo	8 Yr 5 Mo	10 Yr 3 Mo	9 Yr 9 Mo
Longest	25 Yr 8 Mo	21 Yr 8 Mo	20 Yr 6 Mo	33 Yr 8 Mo	19 Yr 6 Mo	38 Yr 5 Mo	33 Yr 0 Mo	35 Yr 8 Mo	51 Yr 5 Mo	49 Yr 10 Mo
<b>RANGE OF SERVICE ON THIS COURT IN YEARS:</b>										
Under 1 Year	1	0	6	14	1	3	0	12	25	71
1 through 4	4	1	22	121	3	7	7	77	200	476
5 through 9	3	0	15	132	7	51	2	69	190	425
10 through 14	0	2	22	70	1	44	1	37	147	252
15 through 19	0	5	13	65	1	44	2	40	150	155
20 through 24	0	1	1	23	0	14	3	10	55	76
25 through 29	1	0	0	15	0	11	2	7	23	51
30 through 34	0	0	0	3	0	1	1	0	14	33
35 through 39	0	0	0	0	0	1	0	1	6	11
Over 40	0	0	0	0	0	0	0	0	3	9
<b>FIRST ASSUMED OFFICE BY:</b>										
	(n = 9)	(n = 9)	(n = 78)	(n = 443)	(n = 13)	(n = 238)	(n = 18)	(n = 253)	(n = 813)	(n = 1,275)
Appointment	7 (78%)	2 (22%)	44 (56%)	167 (38%)	2 (15%)	64 (27%)	5 (28%)	52 (21%)	240 (30%)	1,562 (123%)
Election	2 (22%)	7 (78%)	34 (44%)	276 (62%)	11 (85%)	175 (74%)	13 (72%)	201 (79%)	574 (71%)	20 (2%)
<b>EDUCATION:</b>										
<b>HIGH SCHOOL:</b>	(n = 9)	(n = 9)	(n = 78)	(n = 441)	(n = 13)	(n = 234)	(n = 19)	(n = 244)	(n = 766)	(n = 1,220)
Attended	--	--	--	--	--	--	--	--	39 (5%)	22 (2%)
Graduated	--	--	--	--	--	--	--	--	723 (94%)	1,145 (94%)
<b>COLLEGE:</b>										
Attended	0 (0%)	0 (0%)	1 (1%)	3 (1%)	0 (0%)	3 (1%)	1 (5%)	42 (17%)	179 (23%)	147 (12%)
Graduated	9 (100%)	9 (100%)	74 (95%)	423 (96%)	12 (92%)	217 (93%)	18 (95%)	157 (64%)	256 (33%)	826 (68%)
<b>LAW SCHOOL:</b>										
Attended	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (0%)	0 (0%)	1 (0%)	2 (0%)	2 (0%)
Graduated	9 (100%)	9 (100%)	78 (100%)	441 (100%)	13 (100%)	233 (100%)	19 (100%)	35 (14%)	68 (9%)	713 (58%)
<b>LICENSED TO PRACTICE LAW:</b>										
Number Licensed	9 (100%)	9 (100%)	79 (100%)	443 (100%)	13 (100%)	237 (100%)	18 (100%)	33 (13%)	65 (8%)	721 (56%)
Mean Year Licensed	1984	1977	1984	1985	1985	1986	1982	1983	1984	1986
<b>YEARS LICENSED:</b>										
4 Years or Less	0	0	0	0	0	0	0	0	0	7
5 to 9 Years	0	0	0	5	0	1	0	0	3	46
10 to 14 Years	0	0	3	25	1	15	2	0	3	58
15 to 19 Years	1	0	4	43	2	31	1	5	10	107
20 to 24 Years	2	0	16	81	1	39	1	7	10	131
25 to 29 Years	2	1	15	68	2	56	0	5	5	84
30 or More Years	4	8	41	221	7	95	14	16	34	288
<b>ORIGINALLY CAME TO THIS COURT FROM:</b>										
Attorney Private Practice	1 (11%)	2 (22%)	47 (59%)	--	--	--	--	--	--	--
Judge of Lower Court	6 (67%)	4 (44%)	23 (29%)	--	--	--	--	--	--	--
Legislative Service	0 (0%)	0 (0%)	0 (0%)	--	--	--	--	--	--	--
Other Governmental Service	2 (22%)	3 (33%)	6 (8%)	--	--	--	--	--	--	--
<b>PREVIOUS EXPERIENCE:</b>										
Prosecutor	1 (11%)	5 (56%)	15 (19%)	180 (41%)	5 (38%)	116 (49%)	5 (28%)	9 (4%)	--	--
Attorney Private Practice	9 (100%)	8 (89%)	30 (38%)	355 (80%)	10 (77%)	161 (68%)	16 (89%)	28 (11%)	--	--
Judge of Lower Court	6 (67%)	1 (11%)	21 (27%)	58 (13%)	3 (23%)	32 (14%)	3 (17%)	15 (6%)	--	--
County Commissioner	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	28 (11%)	--	--

\* Data may be incomplete, as this chart includes only information reported to OCA.

From the OCA Annual Statistical Report, 2014, [http://www.txcourts.gov/media/683430/3-Judge-Profile-9\\_1\\_14.pdf](http://www.txcourts.gov/media/683430/3-Judge-Profile-9_1_14.pdf)

---

# THE 2015 GREAT TEXAS WARRANT ROUNDUP

The 9th statewide 2015 Great Texas Warrant Roundup is set to kickoff this spring. This event joins together cities all over Texas in a combined effort to serve outstanding arrest warrants. Last year, 316 entities participated, resulting in over 133,000 cleared warrants.<sup>1</sup> This success results from increased media attention and the influential force behind such a vast concerted effort.

Interested courts (or other entities) may register online at [http://www.austintexas.gov/warrant\\_round\\_up/AMC\\_2015\\_Warrant.cfm](http://www.austintexas.gov/warrant_round_up/AMC_2015_Warrant.cfm). Courts can also register by mailing a paper version of the form. The form should be completed in its entirety before submitting it. All participants need to register, even those that participate every year. A link to the registration form, as well as the paper version (which is slightly modified to prevent early disclosure of dates to the public), and a weekly list of participants will be available online at [www.austintexas.gov/court](http://www.austintexas.gov/court). Select “Warrant Roundup,” located on the right side of the Austin Municipal Court home page.

Participants need to register no later than January 23, 2015. Registering after that date is permitted, but timely registration ensures exposure for a particular roundup, which is critical to the success of the roundup.

Contact the Austin Municipal Court at [roundup@austintexas.gov](mailto:roundup@austintexas.gov) for considerations, a timeline, a list of last year’s participants, and samples of mailers, posters, media notices, door hang tags, cable television ads, etc.

Participating courts must keep statistics on the total number of warrants, the number of warrants cancelled (by service, payment, jail credit, etc.), and the amount of money actually collected and report those statistics to the Austin Municipal Court. Other records need not be reported. The form for reporting those statistics will be provided on a date closer to the event.

For more information, contact:

Rebecca Stark  
Austin Municipal Court Director  
512-974-4692  
[rebecca.stark@austintexas.gov](mailto:rebecca.stark@austintexas.gov)

Kim Chadwick  
Austin Municipal Court Operations Manager  
512-974-4820  
[kimberly.chadwick@austintexas.gov](mailto:kimberly.chadwick@austintexas.gov)



<sup>1</sup> City of Austin, Municipal Court, Warrant Roundup, <http://austintexas.gov/department/warrant-roundup> (accessed January 20, 2015).

# FROM THE CENTER

## 2015 MTSI Traffic Safety Conference

In March, 2015 TMCEC is proud to offer the next Municipal Traffic Safety Initiatives (MTSI) Conference with funding from the Texas Department of Transportation. The conference is open to judges, clerks, juvenile case managers, and prosecutors. A limited number of city officials and traffic safety specialists may also be present. Registration is \$50. Please register no later than February 27, 2015. **Register early: there is often a wait list.** TMCEC will again be recognizing the MTSI award winners.

March 29-31, 2015  
Omni Southpark  
4140 Governor's Row  
Austin 78755

For more information, visit <http://www.tmcec.com/mtsi/traffic-safety-conference-2015/>. Join Us!

## Impaired Driving Forum

TMCEC will join the other judicial training centers (Texas Center for the Judiciary, Texas Association of Counties, and Texas Justice Courts Training Center) to host an Impaired Driving Forum on July 27-28, 2015 at the Omni Southpark in Austin. The eight-hour program will cover issues related to impaired driving from the traffic stop through sentencing. Topics will include Blood Search Warrants; Probable Cause: Stop, Arrest, Investigate; Setting Bond Conditions; Ignition Interlock; and Compliance Issues. A Legislative and Case Law Update (on drug and alcohol issues) will also be offered. The registration fee is \$50. There is no single room fee. Join members from all levels of the Texas Judiciary to discuss this important topic. For more information, contact Ned Minevitz at TMCEC ([ned@tmcec.com](mailto:ned@tmcec.com)). This program is funded by a grant from TxDOT.

Note: This program qualifies for the mandatory 8-hour in person judicial education requirement for judges with two years of experience. Go to [http://www.tmcec.com/programs/judges/judicial\\_education\\_changes\\_faq/](http://www.tmcec.com/programs/judges/judicial_education_changes_faq/) for more information on mandatory judicial education.

## Upcoming Webinars

### TMCEC Online Learning Center (OLC)

February 12: *Alcohol Awareness Courses/DADAP*

February 26: *Records Retention*

March 5: *Mental Health Warrants*

March 19: *Mental Health Issues in Municipal Courts*

### 2014-2015 Webinars on Demand:

*Judgments*

*Blood Warrants Update*

*Judicial Ethics Update*

*TMCEC Radio: Morning Coffee*

*Trial Processes*

*Predicates in Municipal Court*



Presented by the Texas Municipal Courts Education Center

## Reminder: IDEA and Child Welfare Training

In FY 15 (September 1, 2014-August 31, 2015), it is the responsibility of every municipal judge to obtain two hours of approved IDEA & child welfare training. This is required by state law only in judicial academic years ending in 0 or 5. TMCEC is offering multiple options for judges to meet this requirement, including:

- Live training at TMCEC regional seminars (pre or post-conference)
- Video at TMCEC regional seminars (Day 3)
- Video on the TMCEC Online Learning Center
- TMCEC Webinars (July 2, 2015 and July 23, 2015)
- TMCEC Clinic on *Implementing Juvenile Justice* (July 24, 2015)

For more information on the requirement and how to report, see the article in the November 2014 issue of *The Recorder* (<http://www.tmcec.com/resources/recorder/-November-2014,-page-3>) or go to the TMCEC website: <http://www.tmcec.com/programs/judges/idea-child-welfare/>.

# 2015 TMCEC CLINIC SERIES

**FEBRUARY 27**  
Mental Health  
Issues and  
Procedures in  
Municipal Courts  
Austin

**APRIL 17**  
Holding Down the  
Fort: Electronic  
System Security  
Austin

**JULY 24**  
Implementing  
Juvenile Justice\*  
Austin

Funded by a grant from the Texas Court of Criminal Appeals

The Texas Municipal Courts Education Center is proud to present four one-day clinics in FY 2015.

## TMCEC ONE-DAY CLINIC REGISTRATION FORM (2015)

- Mental Health Issues and Procedures in Municipal Courts (February 27)
- Electronic System Security (April 17)
- Implementing Juvenile Justice (July 24)\*

Name (Last, First): \_\_\_\_\_

Title:    \_\_\_ Judge           \_\_\_ Prosecutor           State Bar No. \_\_\_\_\_  
          \_\_\_ Clerk           \_\_\_ Bailiff/Warrant Officer  
          \_\_\_ Other (Describe) \_\_\_\_\_

Court: \_\_\_\_\_ Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email (for your confirmation letter): \_\_\_\_\_

I hereby attest that I am a judge, prosecutor, or court personnel for the municipal court above. I agree that if I fail to cancel more than 72 hours in advance of the clinic, I will forfeit the \$20 registration fee to cover meal costs (and if applicable, TMCEC reserves the right to invoice me for meal expenses, course materials, and housing).

Participant's Signature \_\_\_\_\_ Date \_\_\_\_\_

**Payment Information (cost is \$20 per participant):**

- Check Enclosed (Make checks payable to TMCEC)
- Credit Card
- MasterCard
- Visa

Credit Card Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Name as it appears on card (print clearly) \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Please mail registration form and payment to the Texas Municipal Courts Education Center at 2210 Hancock Drive • Austin, Texas 78756 or fax to 512.435.6118

Participants may also register online (with credit card payment) at <http://register.tmcec.com>.

\*This clinic contains the same content as the pre-conference in the regional programs. Satisfies IDEA and child welfare training requirement (see page 30 of this publication)  
\*\*All clinics will be held at the TMCEC office in Austin.



## TRAFFIC SAFETY: NEWS YOU CAN USE

# DRIVING ON THE RIGHT SIDE OF THE ROAD: WHAT TO KEEP IN YOUR VEHICLE

Too often, people do not take the precautions necessary to stay safe in the event of a catastrophe. One simple thing we can all do to increase safety in the event of a collision is keep certain crucial items in our vehicle. Below are some suggestions for what to keep in your vehicle to keep you and your family safe.



### **Personal Medical Information:**

Write down any medical conditions, medications, or allergies that you or any frequent occupants of your vehicle (i.e., family members) have. Laminate the card. If you are incapacitated in a crash, you may not be able to communicate this critical information to emergency personnel yourself. See the attached example of a medical information card. Some people also keep copies of their living will and power of attorney for health care in their vehicle.

*Where to Stash:* **The glove compartment**

### **Emergency Contact Numbers:**

Write down the phone numbers of those people that should be contacted if you are incapacitated. This way, medical personnel can contact them. You can also put the word “ICE” (“in case of emergency”) next to such names in your cell phone. And always remember, if you have an emergency and are able, dial 9-1-1 immediately!

*Where to Stash:* **The glove compartment, in your wallet**



### **Proof of Insurance:**

You will need this in the event of a crash. Also keep a pen and paper handy if you need to exchange insurance information.

*Where to Stash:* **The glove compartment, center console**

### **First Aid Kit:**

You never know when you might need first aid. The contents of a high-quality first aid kit can be vital when waiting for medical personnel.

*Where to Stash:* **Trunk**



### **Flashlight, Energy Snacks, and a Blanket:**

It may seem like overkill, but if your car breaks down in the middle of nowhere in the middle of the night, you will be glad you have these items.

*Where to Stash:* **Trunk**

### **Your Car’s Owner’s Manual:**

How often does a symbol pop up on your dashboard and you have no idea what it means? The answer lies within the owner’s manual! It also contains important information about your car’s maintenance schedule that you should follow to keep your car safe.

*Where to Stash:* **The glove compartment, center console.**

Sample Medical Information Card:

[FRONT]

[BACK]

**Personal Information**

Name \_\_\_\_\_

Age \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Phone \_\_\_\_\_

In Case of Emergency, contact  
\_\_\_\_\_

Phone \_\_\_\_\_

Relationship \_\_\_\_\_

**Physician**

Name \_\_\_\_\_

Hospital \_\_\_\_\_

City, State \_\_\_\_\_

Phone \_\_\_\_\_

**Recent Photograph of Yourself**

*See Reverse Side For Medical Information*

**Medical Information**

Medications Taken \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Blood Type \_\_\_\_\_

**Medical Conditions** (check all that apply)

No Known Medical Conditions

Angina

Asthma

Bleeding Disorder

Cancer; Type \_\_\_\_\_

Cardiac Dysrhythmia

Clotting Disorder

COPD/Emphysema

Diabetes/Insulin Dependent

Heart Attack

Heart Valve Prosthesis

Hepatitis

High Blood Pressure

HIV/AIDS

Hypertension

Internal Defibrillator

Kidney Problems

Leukemia

Pacemaker

Pregnant; Due Date \_\_\_\_\_

Renal Failure

Seizure Disorder

Stroke

Vision Impaired

Other \_\_\_\_\_

**Allergies** (check all that apply)

No Known Allergies

Aspirin

Codeine

Demerol

Latex

Morphine

Penicillin

Xylocaine

Other \_\_\_\_\_

Information adapted with permission from the Alabama Yellow Dot Program.

# 2014-2015 TMCEC ACADEMIC SCHEDULE

Seminar	Date(s)	City	Hotel Information
Regional Judges Seminar	February 2-4, 2015 (M-T-W)	Addison	The Crowne Plaza Dallas Galleria - Addison 14315 Midway Road, Addison, TX 75001
Regional Clerks Seminar	February 4-6, 2015 (W-Th-F)	Addison	The Crowne Plaza Dallas Galleria - Addison 14315 Midway Road, Addison, TX 75001
New Judges & Clerks Orientation	February 11, 2015 (W)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
Regional Judges Seminar	February 16-18, 2015 (M-T-W)	Galveston	San Luis Resort Spa & Conference Center 5222 Seawall Boulevard, Galveston, TX 77551
Prosecutor's Seminar	March 8-10, 2015 (Su-M-T)	Dallas	Omni Dallas Hotel Park West 1590 Lyndon B Johnson Fwy, Dallas, TX 75234
Regional Clerks & Judges Seminar	March 15-17, 2015 (Su-M-T)	Houston	Omni Houston Hotel at Westside 13210 Katy Freeway, Houston, TX 77079
Traffic Safety Conference	March 29-31, 2015 (Su-M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Regional Judges & Clerks Seminar	April 7-9, 2015 (T-W-Th)	Amarillo	Ambassador Hotel Amarillo 3100 Interstate 40 West Amarillo, TX 79102
Regional Clerks Seminar	April 27-29, 2015 (M-T-W)	S. Padre Island	Pearl South Padre 310 Padre Boulevard, S. Padre Island, TX 78597
Regional Attorney Judges Seminar	May 3-5, 2015 (Su-M-T)	S. Padre Island	Isla Grand Beach Resort 500 Padre Boulevard, S. Padre Island, TX 78597
Regional Non-Attorney Judges Seminar	May 5-7, 2015 (T-W-Th)	S. Padre Island	Isla Grand Beach Resort 500 Padre Boulevard, S. Padre Island, TX 78597
New Judges & Clerks Orientation	May 13, 2015 (W)	Austin	TMCEC 2210 Hancock Drive, Austin, TX 78756
Bailiffs and Warrant Officers Seminar	May 17-19, 2015 (Su-M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Regional Judges & Clerks Seminar	June 8-10, 2015 (M-T-W)	Abilene	MCM Elegante Suites 4250 Ridgemont Dr. Abilene, TX 79606
Prosecutors & Court Administrators Seminar	June 21-23, 2015 (Su-M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Juvenile Case Managers Seminar	June 28-30, 2015 (Su-M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
New Judges & Clerks Seminar	July 6-10, 2015 (M-T-W-Th-F)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Impaired Driving Forum	July 27-28, 2015 (M-T)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744
Legislative Update	August 7, 2015 (F)	Lubbock	Overton Hotel and Conference Center 2322 Mac Davis Ln. Lubbock, TX 79401
Legislative Update	August 14, 2015 (F)	Houston	Omni Houston Hotel at Westside 13210 Katy Freeway, Houston, TX 77079
Legislative Update	August 17, 2015 (M)	Dallas	Omni Dallas Hotel Park West 1590 Lyndon B Johnson Fwy, Dallas, TX 75234
Legislative Update	August 21, 2015 (F)	Austin	Omni Southpark Austin 4140 Governors Row, Austin, TX 78744

**Register online at <http://register.tmcec.com>!**

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY15 REGISTRATION FORM:  
New Judges and New Clerks, and Prosecutors Conferences**

Conference Date: \_\_\_\_\_ Conference Site: \_\_\_\_\_

**Check one:**

- New, Non-Attorney Judge Program (\$200)
- New Clerk Program (\$200)
- Non-municipal prosecutor seeking CLE credit (\$400)
- Non-municipal prosecutor not seeking CLE credit (\$300)

- Prosecutor not seeking CLE/no room (\$100)
- Prosecutor seeking CLE/no room (\$200)
- Prosecutor not seeking CLE/with room (\$250)
- Prosecutor seeking CLE/with room (\$350)

By choosing TMCEC as your MCLE provider prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (*please print legibly*): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_  
 Names you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_  
 Position held: \_\_\_\_\_  
 Date appointed/hired/elected: \_\_\_\_\_ Years experience: \_\_\_\_\_  
 Emergency contact (Please include name and contact number): \_\_\_\_\_

**HOUSING INFORMATION**

**TMCEC will make all hotel reservations** from the information you provide on this form. **TMCEC will pay for a single occupancy room at the following seminars:** four nights at the new judges seminars, four nights at the new clerks seminars, and two nights at the prosecutors conference (if selected). To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room. TMCEC can only guarantee a private room, type of room (queen, king or 2 double beds\*) is dependent on hotels availability. Special Request: \_\_\_\_\_
- I need a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign you a roommate or you may request a roommate by entering seminar participant's name here: \_\_\_\_\_
- I do not need a room at the seminar.

**Hotel Arrival Date (this must be filled out in order to reserve a room):** \_\_\_\_\_

\*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

**STATUS** (*Check all that apply*):

- Full Time  Part Time  Attorney  Non-Attorney  Court Clerk  Deputy Court Clerk
- Presiding Judge  Court Administrator  Prosecutor  Mayor (*ex officio* Judge)
- Associate/Alternate Judge  Bailiff/Warrant Officer  Justice of the Peace  Other \_\_\_\_\_

I have read and accepted the cancelation policy, which is outlined in full on page 10-11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form and full payment of fees.**

\_\_\_\_\_  
*Participant Signature (May only be signed by participant)*

\_\_\_\_\_  
*Date*

**PAYMENT INFORMATION:** Payment **will not** be processed until all pertinent information on this form is complete.

Check Enclosed (*Make checks payable to TMCEC.*) **Amount Enclosed: \$** \_\_\_\_\_

Credit Card

Credit Card Payment:

*Credit card type:*      *Amount to Charge:*      *Credit Card Number*      *Expiration Date*  
 \$ \_\_\_\_\_

MasterCard

Visa      *Name as it appears on card (print clearly):* \_\_\_\_\_

*Authorized signature:* \_\_\_\_\_

**Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.**

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY15 REGISTRATION FORM:  
Regional Judges & Clerks Seminar, Court Administrators, Bailiffs & Warrant Officers,  
Traffic Safety Conference, and Impaired Driving Forum**

Conference Date: \_\_\_\_\_ Conference Site: \_\_\_\_\_

Check one:

Non-Attorney Judge (\$50)  
 Attorney Judge not-seeking CLE credit (\$50)  
 Attorney Judge seeking CLE credit (\$150)  
 Regional Clerks (\$50)

Traffic Safety Conference - Judges & Clerks (\$50)  
 Level III Assessment clinic (\$100)  
 Court Administrators Seminar (\$100)  
 Bailiff/Warrant Officer (\$100)

By choosing TMCEC as your MCLE provider, attorney-judges help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (please print legibly): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_  
 Names you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_  
 Position held: \_\_\_\_\_ Date appointed/hired/elected: \_\_\_\_\_ Are you also a mayor?: \_\_\_\_\_  
 Emergency contact (Please include name and contact number): \_\_\_\_\_

**HOUSING INFORMATION - Note: \$50 a night single room fee**

TMCEC will make all hotel reservations from the information you provide on this form. TMCEC will pay for a **double occupancy room at all regional judges and clerks seminars**. To share with a specific seminar participant, you must indicate that person's name on this form.  
 I request a private room (\$50 per night : \_\_\_\_ # of nights x \$50 = \$\_\_\_\_\_). TMCEC can only guarantee a private room, type of room (queen, king, or 2 double beds\*) is dependent on hotels availability. Special Request: \_\_\_\_\_  
 I request a room shared with a seminar participant. Room will have 2 double beds. TMCEC will assign roommate **or** you may request roommate by entering seminar participant's name here: \_\_\_\_\_  
 I do not need a room at the seminar.

**Hotel Arrival Date (this must be filled out in order to reserve a room):** \_\_\_\_\_

\*If you bring a companion with you to stay in the hotel, the hotel reserves the right to charge an additional fee.

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_  
 Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

**I plan to attend the following sessions in their entirety:**

**Day 1: Pre-Conference, Implementing Juvenile Justice, 1 p.m. – 5 p.m. (4 hours)**

*(In Tyler, Addison and South Padre Attorney judges seminars, the pre-conference will be a post-conference and will be on Day 3, 1 p.m.-5 p.m.)*

**Day 2: Seminar, 8 a.m. – 5 p.m. (8 hours)**

**Day 3: Seminar, 8 a.m. – Noon (4 hours)**

**\*For judges only: I understand that if I do not attend Day 3 in its entirety, then I am not allowed a hotel room at grant expense on the evening of Day 2. All judges are allowed a hotel at grant expense on the evening of Day 1.**

**\*Bailiffs/Warrant Officers:** Municipal judge's signature required to attend Bailiffs/Warrant Officers' program.

Judge's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 DOB: \_\_\_\_\_ TCOLE PID # \_\_\_\_\_

I have read and accepted the cancelation policy, which is outlined in full on page 10-11 of the Academic Catalog and under the Registration section of the website, www.tmcec.com. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of the registration form (with all applicable information completed) and full payment of fees.**

\_\_\_\_\_  
*Participant Signature (may only be signed by participant)*

\_\_\_\_\_  
*Date*

**PAYMENT INFORMATION:**

**Registration/CLE Fee: \$\_\_\_\_\_ + Housing Fee: \$\_\_\_\_\_ = Amount Enclosed: \$\_\_\_\_\_**

Check Enclosed (Make checks payable to TMCEC.)

Credit Card

Credit Card Payment:

Amount to Charge: \_\_\_\_\_ Credit Card Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

Credit card type: \$ \_\_\_\_\_

MasterCard

Visa Name as it appears on card (print clearly): \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.

**TEXAS MUNICIPAL COURTS EDUCATION CENTER  
FY15 REGISTRATION FORM: PROSECUTORS CONFERENCES**

Conference Date: \_\_\_\_\_

Conference Site: \_\_\_\_\_

**Check one:**

- |   |   |
|---|---|
| <input type="checkbox"/> Prosecutor not seeking CLE/no room (\$100)   | <input type="checkbox"/> Prosecutor seeking CLE/with room (\$350)                   |
| <input type="checkbox"/> Prosecutor not seeking CLE/with room (\$250) | <input type="checkbox"/> Non-municipal prosecutor seeking CLE/with room (\$400)     |
| <input type="checkbox"/> Prosecutor seeking CLE/no room (\$200)       | <input type="checkbox"/> Non-municipal prosecutor not seeking CLE/with room (\$300) |

By choosing TMCEC as your MCLE provider, prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. The CLE fee will be deposited into the grantee's private fund account to cover expenses unallowable under grant guidelines, such as staff compensation, membership services, and building fund.

Name (*please print legibly*): Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Name you prefer to be called (if different): \_\_\_\_\_ Female/Male: \_\_\_\_\_

Position held: \_\_\_\_\_

Date appointed/hired/elected: \_\_\_\_\_ Years experience: \_\_\_\_\_

Emergency contact: \_\_\_\_\_

**HOUSING INFORMATION**

**TMCEC will make all hotel reservations** from the information you provide on this form. **TMCEC will pay for a single occupancy room for two nights at the prosecutors conference (if selected).** To share with another seminar participant, you must indicate that person's name on this form.

- I need a private, single-occupancy room.
- I need a room shared with a seminar participant. TMCEC will assign you a roommate or you may request a roommate. [Please indicate roommate by entering seminar participant's name: \_\_\_\_\_ (Room will have 2 double beds.)]
- I need a private double-occupancy room, sharing with a non-participating guest. [I will pay additional cost, if any, per night]
- I will require:  1 king bed  2 double beds
- I do not need a room at the seminar.

**Hotel Arrival Date** (this **must** be filled out to reserve a room): \_\_\_\_\_  Smoker  Non-Smoker

Municipal Court of: \_\_\_\_\_ Email Address: \_\_\_\_\_

Court Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_

Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_

**STATUS** (*Check all that apply*):

- Full Time  Part Time  Judge  Prosecutor  Other \_\_\_\_\_

I certify that I am currently serving as a municipal judge, prosecutor, or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel at least 10 business days prior to the conference. I agree that if I do **not** cancel at least 10 business days prior to the event that I am **not** eligible for a refund of the registration fee. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site IF I have been unable to reach a staff member at the TMCEC office in Austin. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials and, if applicable, housing (\$85 or more plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that I work at least 30 miles from the conference site. **Full payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and full payment of both the registration fee and the hotel room.**

\_\_\_\_\_  
*Participant Signature (May only be signed by participant)*

\_\_\_\_\_  
*Date*

**PAYMENT INFORMATION:** Payment **will not** be processed until all pertinent information on this form is complete.

- Check Enclosed (*Make checks payable to TMCEC.*)  Credit Card

Credit Card Payment:

*Amount to Charge:* \_\_\_\_\_ *Credit Card Number* \_\_\_\_\_ *Expiration Date* \_\_\_\_\_  
\$ \_\_\_\_\_

*Credit card type:*

- MasterCard *Name as it appears on card (print clearly):* \_\_\_\_\_  
 Visa *Authorized signature:* \_\_\_\_\_

**Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756, or fax to 512.435.6118.**



- If you need lodging, you will have to make your own reservation and cover the cost with the hotel.
- TMCEC will send you hotel information upon receipt of your registration form and the \$100 fee (\$150 for defense lawyers & council members).
- Up to six hours credit can be received for CLE with an additional payment of \$50.
- Please check the program you would like to attend and return completed form with the registration fee to TMCEC.

LUBBOCK                       HOUSTON

August 7, 2015  
Overton Hotel  
806.776.7000

August 14, 2015  
Omni Westside  
281.558.8338

DALLAS                               AUSTIN

August 17, 2015  
Omni Park West  
972.869.4300

August 21, 2015  
Omni Southpark  
512.448.2222

Course lasts from 9:00 a.m. to 5:00 p.m.

## Legislative Update '15 Registration Form

**REGISTRATION FORM:**                       LUBBOCK                       HOUSTON                       DALLAS                       AUSTIN

Name (please print legibly): \_\_\_\_\_  
 Street: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Office Telephone #: \_\_\_\_\_ Court #: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Primary City Served: \_\_\_\_\_ Other Cities Served: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

**Check all that apply:**

- |  |  |   |  |                                     |   |
|--|--|---|--|-------------------------------------|---|
| <input type="checkbox"/> Full Time               | <input type="checkbox"/> Part Time                 | <input type="checkbox"/> Attorney**           | <input type="checkbox"/> Non-Attorney              | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Defense Lawyer (\$150)** |
| <input type="checkbox"/> Presiding Judge         | <input type="checkbox"/> Associate/Alternate Judge | <input type="checkbox"/> Justice of the Peace | <input type="checkbox"/> Mayor & Council (\$150)** |                                     |   |
| <input type="checkbox"/> Court Administrator     | <input type="checkbox"/> Court Clerk               | <input type="checkbox"/> Deputy Court Clerk   | <input type="checkbox"/> Other (\$150):            |                                     | _____   |
| <input type="checkbox"/> Bailiff/Warrant Officer |  |   |  |                                     |   |

\*\* Please add \$50 if requesting CLE credit.

*I understand that I will be responsible for making and paying for my own hotel reservation. Payment is required for this program; payment is due with this form. The registration fee is refundable if the Center is notified of cancellation in writing 10 days prior to the seminar.*

\_\_\_\_\_  
 Participant Signature Date

**PAYMENT INFORMATION:**

\$100 Check for Registration Fee Enclosed

For participants who do not work in a municipal court:

\$150 Check for Registration Fee Enclosed

\*\*  \$50 Check for CLE Fee Enclosed

*Credit Card Registration: (Please indicate clearly if combining registration forms with a single payment.)*

Credit Card type:

	Credit Card Number	Expiration Date	Verification Number (found on back of card)
<input type="checkbox"/> MasterCard	_____	_____	_____

Visa                      Name as it appears on card (print clearly): \_\_\_\_\_

Total Amount:

\$ \_\_\_\_\_                      Authorized Signature \_\_\_\_\_

Please return completed form with payment to TMCEC at 2210 Hancock Drive, Austin, TX 78756.  
 Fax registration forms with credit card information to 512.435.6118.

**TEXAS MUNICIPAL COURTS  
EDUCATION CENTER**  
2210 Hancock Drive  
AUSTIN, TX 78756  
www.tmcec.com

Presorted Standard  
U.S. Postage  
PAID  
Austin, Texas  
Permit No. 114

**Change Service Requested**

### **TMCEC MISSION STATEMENT**

To provide high quality judicial education, technical assistance, and the necessary resource materials to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

## **HAVE YOU VISITED TMCEC.COM LATELY?**

The TMCEC website has a new and improved look and design. It has a responsive design that will allow you to view it on a smart phone, tablet, laptop, or desktop. The website shrinks or expands automatically for easy viewing on the type of device being used. The color scheme has been updated and the profile page layout has been streamlined.

From the profile page a user may access online registration. We hope you logon frequently and use it as your home page.

