

ADVANCED JUDICIAL ETHICS FOR MUNICIPAL COURT CLERKS

Presented by the State Commission
on Judicial Conduct
Toll-Free (877) 228-5750
www.scjc.state.tx.us

Texas Municipal Court Education Center
2007 - 2008

JUDICIAL ETHICS FOR COURT PERSONNEL

By the end of this session, I'll show you:

- Why you need to review the Code of Judicial Conduct
- Some solutions to ethics problems you might face
- When to consider filing a complaint with the Commission

COMMISSION OPERATIONS



Commission Has Jurisdiction Over:

- State Appellate Judges
- State District Judges
- Associate Judges
- County-Level Judges (County Judges and County Court-at-Law Judges including probate)
- Justices of the Peace
- **Municipal Judges**
- Retired, Senior and Former Judges sitting by₄ assignment

Commission Does Not Have Jurisdiction Over:

- Federal judicial officers
- Law Enforcement Officers
- Attorneys
- Court Clerks

The Commission is authorized to discipline any judge for:

- Incompetence;
- Willful or persistent violation of the *Code of Judicial Conduct*;
- Willful or persistent conduct that brings discredit upon judiciary; or
- Willful or persistent violation of Supreme Court Rules.

Powers of the Commission

- Dismissal of Complaints
- Public and Private Sanctions following the filing of Complaints
- Orders of Education
- Formal Proceedings against or Suspensions of judges
- Public Statements

What About Confidentiality?

When requested, the Complainant's identity remains confidential, for as long as possible.

Commission Structure

There are **13** members of the Commission:

6 Judges appointed by the Supreme Court,

5 Citizens appointed by the Governor, and

2 Lawyers appointed by the State Bar.

Commission Staff

There are **14** staffers on the Commission:

- 6 Attorneys (including the Executive Director)
- 3 Investigators
- 1 Legal Assistant
- 4 Administrative Staff

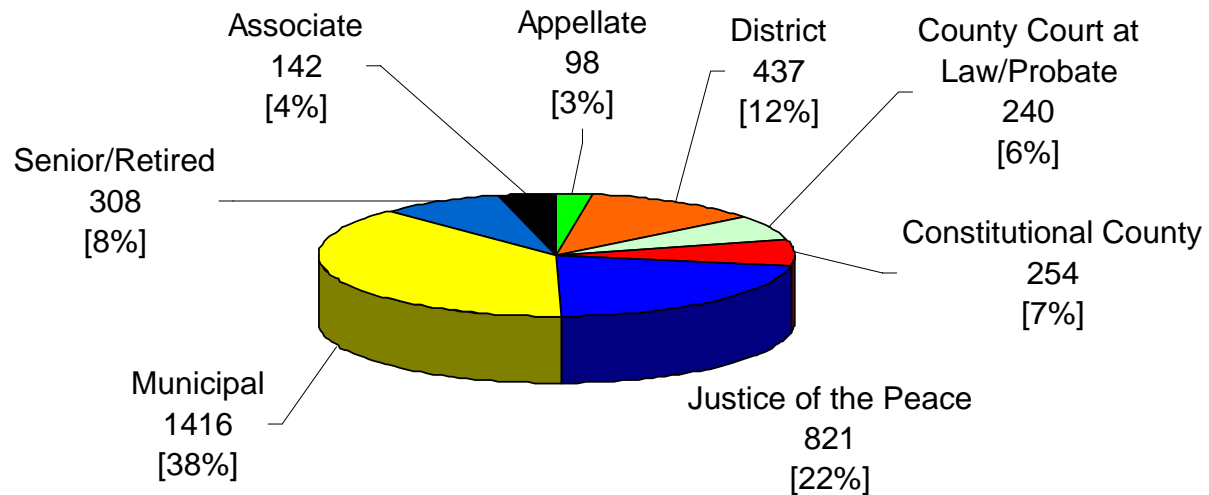
COMMISSION STATISTICS



2007 STATISTICS

3,716 Judges
1,416 (38%) Municipal Judges

Fig. 1 Total Number of Texas Judges*

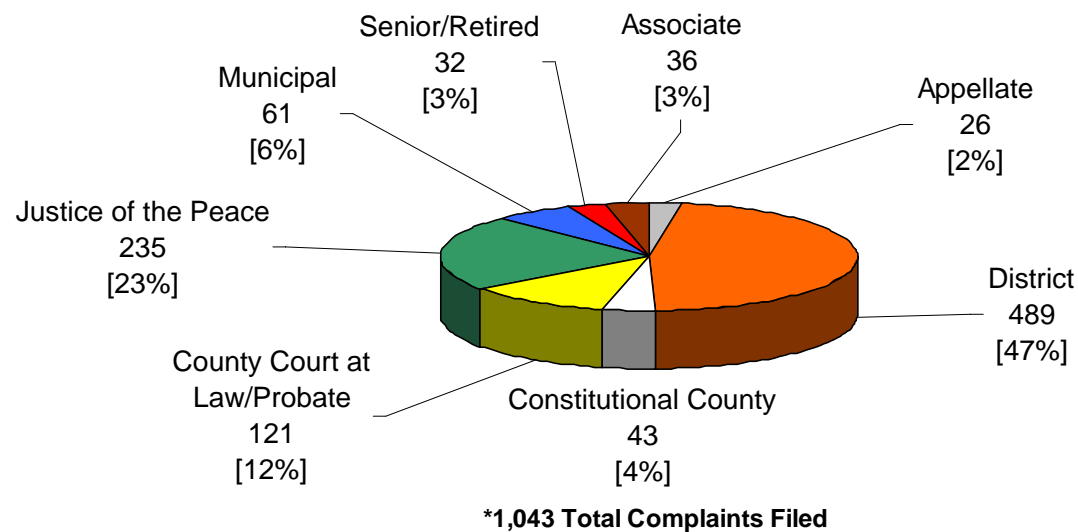


*3,716 Total Judges

Source: Office of Court Administration (September 2007)

1,043 Complaints 61 (6%) Municipal Judges.

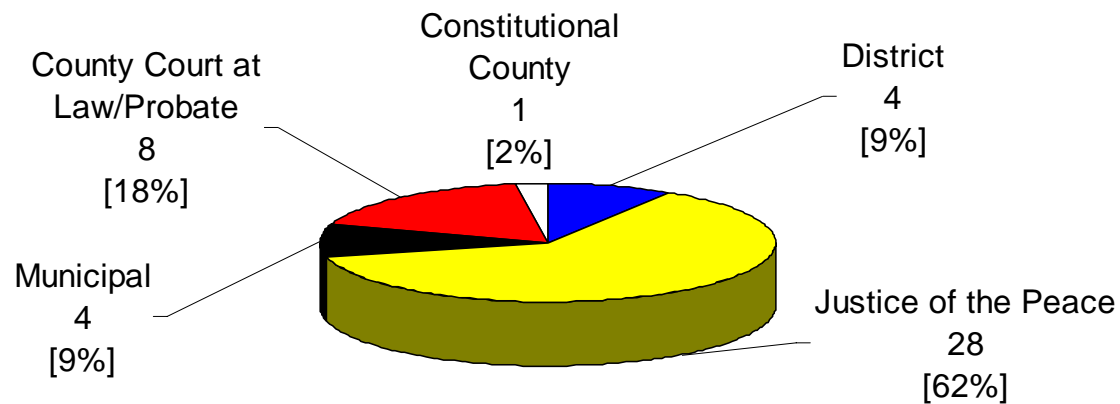
Fig. 2 Number and Percentage of Cases filed by Judge Type



45 sanctions issued

4 (9%) Municipal Judges

Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type*



*45 Total Disciplinary Actions

CANONS THAT RELATE TO COURT STAFF



Where Can I Find the Code of Judicial Conduct ?

- Go to the Commission on Judicial Conduct, www.scjc.state.tx.us, and click "Governing Provisions."
- Or link from the Texas Municipal Courts Education Center, www.tmcec.com, to "Judges" and click "Code of Judicial."
- Or link from the Office of Court Administration, www.courts.state.tx.us/oca, to "Judicial Entities" and click "State Commission on Judicial Conduct."

The Judge & Court Staff

A **judge should require staff**, court officials and others subject to the judge's direction and control, while they are performing their official duties, **to observe the standards** of fidelity and diligence **that apply to the judge**, and **to refrain from manifesting bias or prejudice.**

--Canon 3C(2), Code of Judicial Conduct

Patience, Dignity & Courtesy

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

--Canon 3B(4), Code of Judicial Conduct

Bias or Prejudice

A judge shall not . . . manifest **bias or prejudice**, including on the basis of race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. . . .

--Canon 3B(6), Code of Judicial Conduct

More on Bias or Prejudice

A judge shall not knowingly permit staff, court officials and others subject to the judge's direction and control to manifest said bias or prejudice.

--Canon 3B(6), Code of Judicial Conduct

Order and Decorum

A judge **shall require order and decorum** in court proceedings.

--Canon 3B(3), Code of Judicial Conduct

Prestige of Judicial Office

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. . . .

--Canon 2B, Code of Judicial Conduct

Influence Over The Judge

. . . A judge shall not convey or permit others to convey the impression they are in a special position to influence the judge.

--Canon 2B, Code of Judicial Conduct

The Right To Be Heard

A judge shall accord to **every person** who has a legal interest in a court proceeding **the right to be heard** according to law.

--Canon 3B(8), Code of Judicial Conduct

Ex Parte Communications

A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit or consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

--*Canon 6C(2), Code of Judicial Conduct*

What Is An *Ex Parte* Communication?

A communication made to or by a judge, **concerning the merits of a pending case** or proceeding, **outside the presence of all the parties or their representatives.**

(Note: **Not every communication is improper, e. g.,** default hearing, procedural matters, and magistration.)

Can Court Staff Be Sanctioned?

- Not by the Commission on Judicial Conduct
- But by the Human Resources Department
- Can the judge complain about behavior of court staff?

DEMEANOR ISSUES YOU FACE EACH DAY



Carrie, The Crabby Clerk

Carrie, your deputy clerk, has a short fuse. She is a good worker, but lacks patience. When a litigant comes in with a bad attitude, Carrie adopts an even worse attitude herself. Recently, she responded to an angry defendant with her own string of profanities.

What Should You Do About Carrie?

1. Compliment her, and ask her to teach everyone else to talk like that.
2. Tell her to "Shut up or else!"
3. Warn her to stop, then contact the Human Resources department.
4. Warn her to stop, then contact the Judge.

Patience, Dignity and Courtesy

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, staff, court officials and others subject to the judge's direction and control.**

--Canon 3B(4), Code of Judicial Conduct

Judge's Expectations of Staff

A **judge should require staff**, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and **to refrain from manifesting bias or prejudice** in the performance of their official duties.

--Canon 3C(2), Code of Judicial Conduct

MONEY AND RECORD-KEEPING DUTIES YOU FACE EACH DAY



Undeposited Court Fees

Judge Ned has served on the bench for 20 years. Nelda has been his faithful court clerk for all that time. When Nelda returned from vacation, she discovered that the fine payments the Court had collected were missing and had not been deposited. Nelda tried to discuss the problem with Judge Ned, but he just got angry and refused to talk about it.

What Should Nelda Do?

1. Keep quiet and forget about it.
2. Tell her best friend confidentially.
3. Report the situation to the District Attorney.
4. Report the situation to the Commission on Judicial Conduct.

***EX PARTE* ISSUES YOU FACE EACH DAY**



A Lawyer's Letter

As usual, you open a letter from a lawyer addressed to your Judge. It looks like any other letter, but as you read it, you realize the lawyer is giving an explicit and detailed defense about his own traffic tickets. He also states that he is entering his plea of "Not Guilty," and he requests a jury trial.

What Should You Do About The Letter?

1. Advise the judge and ask if you might return the letter with a copy to the prosecutor of both letters.
2. File it away in the case file.
3. Throw the letter away in the trash.

Ex Parte Communications

A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit or consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

--*Canon 6C(2), Code of Judicial Conduct*

Paul's Post-It Note

An irate small claims plaintiff yelled at everyone in the court office. He was particularly hateful to Paul, the court clerk. After the plaintiff left, Paul attached the following post-it note to the court's file: "This guy was a real jerk! Watch out for him!"

Any Problems With The Note?

1. This is an innocent heads-up to anyone dealing with the litigant, warning them about his bad attitude.
2. The note doesn't concern the merits of the case, so there's no problem.
3. The note goes into a public file, and could give the public the impression that this is not an impartial court.
4. It's temporary—we can remove it if the public wants to see the file.

Recent Sanctions Involving Court Personnel



Clerk's Timecard Falsified

The judge was indicted on eight counts of intentionally and knowingly falsifying a clerk's timecard that reflected hours worked that the clerk did not actually work. The judge was suspended from office with pay. Later, he was convicted and resigned from the bench.

[Art. V, §1-a(6)A, Constitution.] *Suspension of a Justice of the Peace* (10/29/01).

Judge Influenced by Court Clerk ...

Based on a complaint filed by his clerk (who had a dispute about her paycheck), the judge issued a warrant for the County Treasurer's arrest, without determining if probable cause existed. The judge failed to comply with the law and failed to maintain professional competence in the law.

[Canons 2A and 3B(2).] *Private Admonition of a Justice of the Peace* (12/21/04).

... Another case

The court clerk complained to the judge about a funeral home director's repeated efforts to obtain a signed death certificate. The judge allowed his clerks to improperly influence his conduct towards the funeral home director, causing the judge to berate the person and treat him discourteously.

Judge's Record-Keeping Duties

The judge persistently failed to maintain and monitor his docket, properly account for and deposit monies collected by his court, and timely file with OCA the required monthly activity reports.

[Art. V, §1-a(6)A, Constitution; Canon 2A.] *Public Admonition and Order of Additional Education of a Justice of the Peace (08/25/03).*

Judicial Campaign

The judge placed undue pressure on his court staff by “requesting” that they use their personal time to assist him with his re-election campaign.

[Canon 2B.] Private Admonition of a District Judge (04/07/04).

Sexual Harassment

The judge made inappropriate personal comments to a court clerk who worked under his direct supervision, despite being warned about his conduct. The employee filed a sexual harassment complaint with the county.

[Canon 3B(4).] *Private Order of Additional Education of a County Judge (10/09/03).*

You can't always divine your professional responsibilities?



A Code of Conduct for Court Personnel?

- **What do you think? Problems?**
- **Are clerks officers of the court?**
- **Professionalism.**
- **Public confidence in our legal system.**

A
***Code of Conduct for Court
Personnel***

It's in your future!



Code of Conduct for Court Personnel

Preamble

Court personnel hold a respected and honored position of public trust and are expected to uphold the integrity of the legal system by avoiding the appearance of impropriety in all court activities.

Those who work in or for a court in this state, are officers of the court, and should at all times strive to promote the administration of justice.

Avoiding Impropriety

Court personnel must avoid impropriety and the *appearance* of impropriety in all activities.

Compliance with law

Court personnel must respect and comply with the law and must at all times conduct themselves in a manner that promotes public confidence in the legal system.

Impartiality and Diligence

Court personnel must perform their court duties impartially and diligently.

Lending Prestige to Advance Interests

- Court personnel must not lend the prestige of their position to advance the private interests of themselves or others.
- Court personnel shall not convey to others the impression they are in a special position to influence the judge on matters relating to court business.
- Court personnel shall not attempt to influence judicial conduct or judgment.

Confidentiality

- The relationship between the judge and court personnel is a confidential one.
- Court personnel must abstain from public comment about proceedings filed in court.
- Court personnel must not disclose confidential information received in the course of their duties and must not employ such information for personal gain.

Patience, Dignity & Courtesy

Court personnel **shall be patient, dignified and courteous to** litigants, jurors, witnesses, lawyers and **others with whom they deal** in an official capacity.

Bias or Prejudice

Court personnel should **refrain from manifesting bias or prejudice** in the performance of their official duties.

Discrimination

Court personnel shall not discriminate on the basis of race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

Political Activities

- The political activities of court personnel must conform to such limitations as provided by written policy and/or statute.

Order and Decorum

Court personnel shall conduct themselves at all times to insure that the court's order and decorum is maintained.

The Right To Be Heard

Court personnel shall not interfere with a party's **right to be heard** according to law.

Court Records

Court personnel should not hinder or obstruct a person's reasonable request to inspect case records or other court records, and should make such a request immediately known to the judge of the court, or other individual in charge of fulfilling such requests.

***Ex Parte* Communications**

Court personnel shall not directly or indirectly initiate or permit *ex parte* communications about the merits of a pending or impending judicial proceeding, and should not provide legal advice or legal referrals to any party.

Gifts and Favors

Court personnel should consult with the judge before accepting any gift or favor from an attorney or party or their representative.

Court Property

Court personnel shall use the same fidelity and diligence required of the judge with respect to property in the court's custody, including, but not limited to, monies, supplies and equipment, official court stationery and forms.

E-mail and Internet Usage

Court personnel's usage of e-mail and the internet while at work must conform to such limitations as provided by written policy and/or statute.

(**Note:** For example, personal business interests, or expressing political viewpoints, are usually not allowed during work hours and with the use of office computers.)

HELPFUL RESOURCES



Amicus Curiae Program for Judges

- Do you know a judge who is struggling with depression, alcoholism, drug addiction or other impairment?
- For more information about a ***confidential*** program that assists judges with impairment issues, contact:
 - Elaine Thompson, Program Manager
 - Toll Free: 877-228-5750
 - In Austin: (512) 463-8138

The State Commission on Judicial Conduct

Toll-Free: (877) 228-5750

In Austin: (512) 463-5533

P.O. Box 12265, Austin, Texas 78711

scjc.state.tx.us

(for complaint forms, sanctions, Code of
Judicial Conduct and other resources)