



AUTHORITIES AND DUTIES

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AUTHORITY

- “The Right to Exercise Power”
- LEGAL AUTHORITY

The right and power of judges to require obedience to their orders lawfully issued in the scope of their duties



TYPES OF DUTIES

- MAGISTRATE
- JUDICIAL
- MINISTERIAL
- ADMINISTRATIVE



MAGISTRATE DUTIES

- All municipal court judges are magistrates
- Duties scattered throughout codes
- Preserve peace, prevent and suppress crime
- Explain rights and warnings
- Set and accept bail

MAGISTRATE DUTIES CONT'D

- Issue emergency mental commitments
 - Issue emergency protective order
 - clerk required to send copy of order to victim if victim was not present when order issued
 - Concealed Handgun Permits-Clerk or magistrate must notify DPS to suspend
 - Search Warrant—clerk makes copy of affidavit available to public
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JUDICIAL DUTIES

- Duties that requires exercise of judgment
- Duties that requires a decision of a question of law or fact or choice of alternatives



ARRAIGNMENT

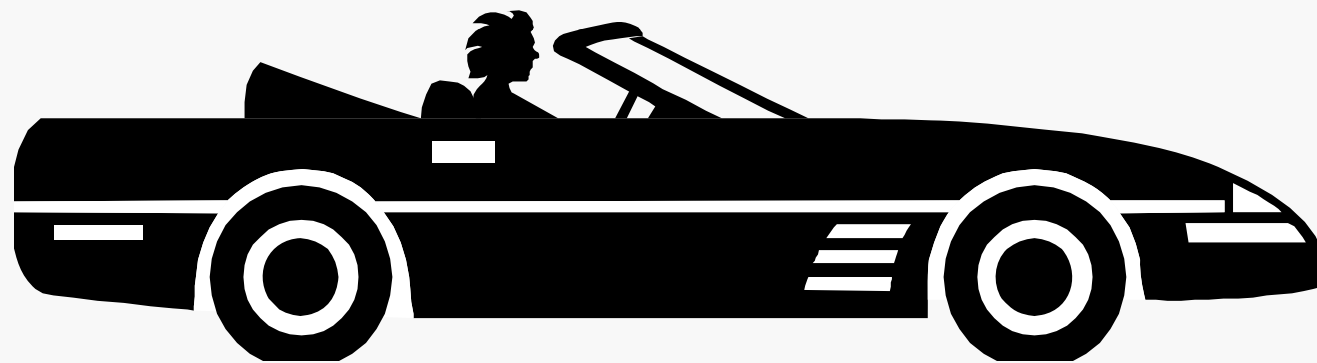
- JUDGE ACCEPTS PLEA
guilty, no contest or not guilty—
 - If defendant refuses to plea, judge enters a not guilty plea and sets for a jury trial
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Guilty or No Contest

- Judge sets fine within penalty range.

Suggested minimum fine for defendants who do not want to contest case- “window fines”

- Judge determines how defendant pays fine
 - Immediately
 - Time payment or extension
 - Community service
 - Clerk cannot grant time payment or community service
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Alternative Sentencing

Driving Safety Course

- Defendant requests DSC
 - Judge grants
 - May have standing order to process
 - Defendant presents proof of completion
 - Judge dismisses judgment
 - Defendant fails to comply
 - Clerk sets case for show cause, judge hears
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Deferred Disposition

- Prosecutors may recommend
 - Judge dismisses case/may assess a special expense
- Judge has discretion to grant deferred disposition
- Defendant complies with terms
- Defendant fails to comply
 - Judge enters judgment and assesses fine

DISMISSALS

- Clerk cannot dismiss cases
 - Judge's authority to dismiss limited
 - In certain instances, dismissal required
 - In some instances, judge's discretion
 - In some instances, motion from prosecutor required
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DISMISSALS

- Judge **required** to dismiss:
 - Completion of DSC
 - Completion of Deferred
 - Completion of Teen Court
 - inspection certificate expired less than 60 days and corrected within 20 working days
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DISMISSALS

- Judge **required** to dismiss:
 - Court determines no jurisdiction
 - Defendant's speedy trial violated
 - Motion before the court
 - Complaint defective
 - Motion to quash before court
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DISCRETIONARY DISMISSALS

- Judge has **discretion** to dismiss and charged a fee when defect remedied:
 - Expired Inspection Certificate expired more than 60 days
 - Expired Driver's License
 - Expired Registration
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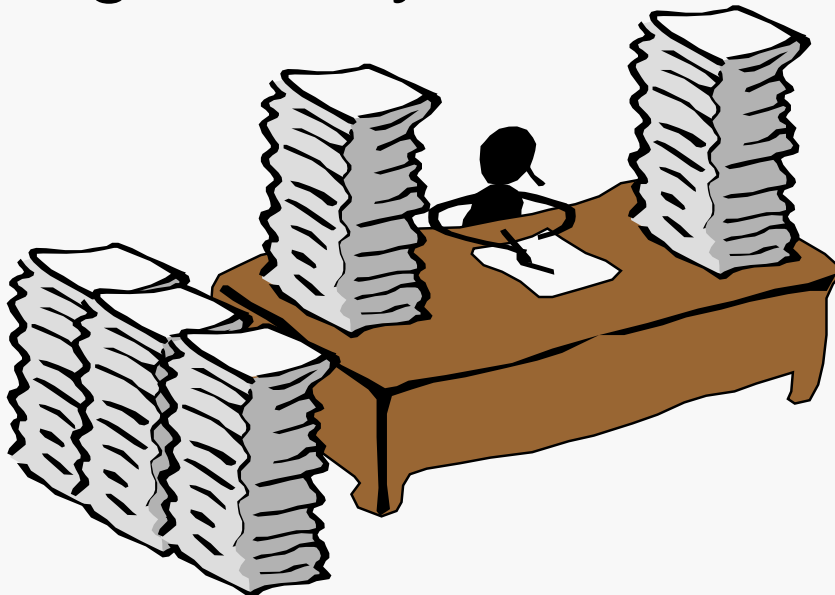
DISMISSALS

- **Defense to Prosecution**

- Prosecutor makes a motion to dismiss
 - Proof valid at time of arrest for
 - **Fail to present DL**
 - **Failure to maintain financial responsibility**
 - **Failure to display inspection certificate**
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MINISTERIAL/ADMINISTRATIVE DUTIES

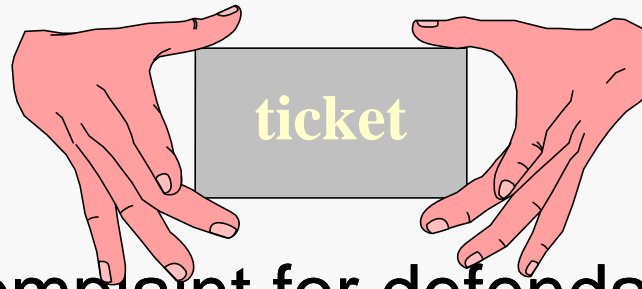
- Duties in which there is nothing left to discretion
- Duties that are imposed by law that are generally administrative in nature



Filing Cases

- Tickets/citations

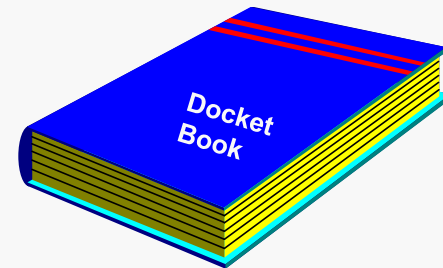
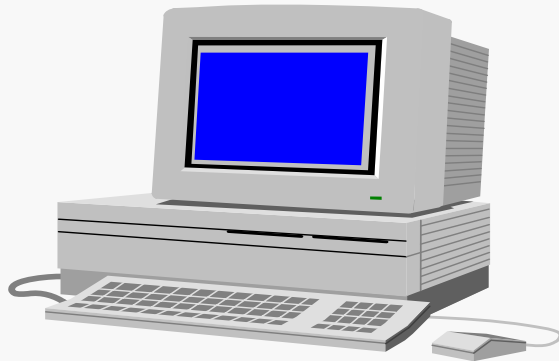
- Filed with court when clerk or judge accepts



- Serves as complaint for defendant to plea to
 - Prepare and maintain case file
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DOCKET

- Enter all cases on docket
- Assign cause/docket number
- Maintain docket



Other Administrative Duties:

- Records Management
 - Financial Management
 - Office Management
 - Budget Preparation
 - Compilation of Data for reporting
 - Preparation of Processes (warrants, judgments, summonses, subpoenas, etc)
 - Preparation of DSC paperwork
 - Coordination of trial processes
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WHOSE JOB IS IT?

- Many processes require cooperation of judge and administrative staff
 - It important to know—**who can do what?**
 - Activity Sheet
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TRIALS

- Clerk schedules trials
 - Clerk coordinates trial dates with involved parties
 - Judge establishes continuance policy (clerk has no authority to grant continuance)
 - Clerk prepares case for trial
 - Prepares sworn complaint
 - Issues subpoenas (Judge may also issue)
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JURY TRIALS

- Judge issues writ of venire
 - Writ of venire: a written order for summoning prospective jurors
 - Clerk summons prospective jurors
 - Clerk notifies county assessor collector of permanent exemptions requested
 - Clerk coordinates case day of trial
 - Clerk shuffles jury if demanded
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DEFENDANT FAILS TO PAY

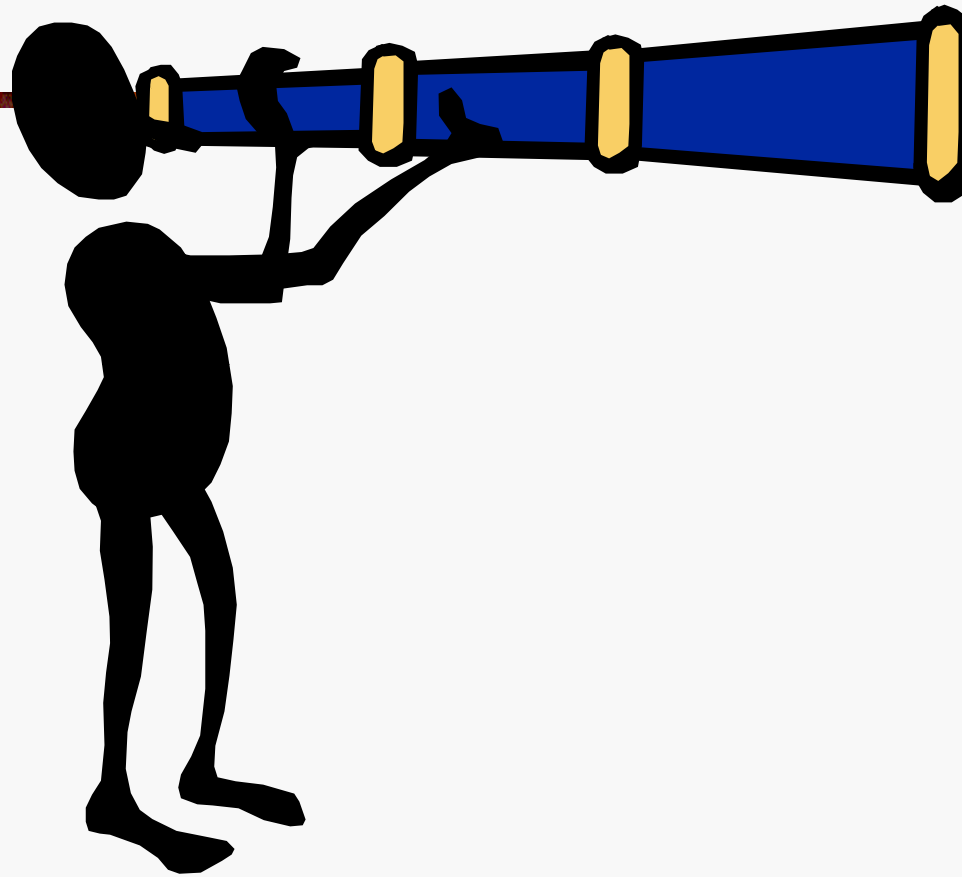


CAPIAS PRO FINE

- Clerk monitors payments, notifies judge if defendant fails to make payment
 - Clerk prepares affidavit, gives file to judge to review
 - Clerk prepares capias pro fine, Judge Issues (signs)
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CAPIAS PRO FINE cont'd

- Clerk
 - ✓ Notifies police Department
 - ✓ Enters on FTA program (OMNI-Base)
 - ✓ Notifies warrant collection agency, if any
 - Clerk files case in warrant status
 - Sends notice of warrant
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Defendant FTA



DEFENDANT FTA

- Clerk prepares sworn complaint and probable cause
 - Prosecutor makes decision on FTA charge
 - Judge determines if probable cause sufficient to issue warrant
 - Clerk prepares warrant
 - Judge signs warrant
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DEFENDANT FTA

- Clerk:
 - ✓ notifies police department
 - ✓ Enters on FTA program (If contracted with DPS)
 - ✓ Notifies warrant collection agency, if any
 - ✓ Files case in warrant status
 - ✓ Clerk sends courtesy notice
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BONDS

- If defendant fails to appear
 - ✓ Judge declares forfeiture & signs judgment nisi
 - ✓ Clerk files case on scire facias docket
 - ✓ Clerk issues civil citation
 - ✓ Clerk may serve citation by mail
 - ✓ Clerk sets case for trial
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Oath

Art. 45.019, C.C.P.

- Authority to Administer Oath to Affiant
(Person swearing to the complaint)
 - Judge
 - Clerk/Deputy Clerk
 - City Attorney/Deputy City Attorney
 - City Secretary
 - Authenticate act with court seal
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Oath

Sec. 602.002, G.C.

- Provides authority for a municipal court judge and court clerk to administer an oath in any matter
 - New Legislation from last session
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Judicial Duties That CAN'T Be Delegated

- Set/forfeit bail
 - Determine sufficiency of bonds
 - Issue warrants, capias, capias pro fine, summons
 - Arraignment, request & accept pleas
 - Enter not guilty plea
 - Conduct pre-trials and trials
 - Rule on motions
 - Grant continuances
 - Set fines
 - Grant extensions and time payments
 - Give jail credit
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Judicial Duties that CAN'T be Delegated, cont'd

- Determine Indigence
 - Allow community service to discharge fine
 - Set appeal bonds
 - Grant DSC
 - Grant deferred disposition
 - Conduct stolen or seized property hearings
 - Signing judgments
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Consequences Delegating a Judicial Duty

- Evidence may be suppressed,
 - Arrests may be illegal
 - Judge, clerk or city may not be immune from liability
 - *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex.1987)
 - *Sharp v. State*, 677 S.W.2d 513 (Tex.Crim.App. 1984)
 - *Crane v. Texas*, 759 F.2d 412 and 766 F.2d 193 (5th Cir. 1985)
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Factors Determining Judicial Action Entitled to Immunity

- Normal judicial function
 - Act occurred in courtroom or adjunct spaces
 - Controversy centered around pending case
 - Act result of visit to judge in official capacity
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The End

