

# An Overview of the Courts

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## INTRODUCTION

The judicial system in the United States is an adversarial system. An adversary is a contestant who, like a boxer in a boxing match, tries to win while working within the rules of the match or the boundaries of the law. Similarly, an adversarial legal system is one in which the lawsuit or case is viewed as a struggle between two sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral and dispassionately decides *questions of law* (disputed legal contentions) and, when there is no jury, *questions of fact* (disputed factual contentions). The theory of this process is that the trier of fact (judge or jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other side's case. Decisions are based upon the evidence presented and the applicable law.

### PART 1 HISTORY OF THE JUDICIAL PROCESS

#### A. Common Law

The American legal justice system has its origins in the English system of common law. *Common law* refers to the body of law that developed in England and the American colonies before the American Revolution. Today, it is viewed as principles, customs, and rules of action that are accepted as part of the justice system. Many common law principles have been incorporated into current codes and statutes. For instance, the waiver of trial by jury (Arts. 1.13 and 45.025, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and justification as a defense (Sec. 9.02, P.C.) all spring from the English common law. Other common law principles have not been codified, or written into statutes, such as the court's inherent power. The inherent power of the judiciary is that authority which is essential to the existence, dignity, and functions of the court originating from the very fact that it is a court. *In re Integration of the Neb. Bar Assn.*, 133 Neb. 283, 275 N.W. 265, 267 (1937).

#### B. Constitutional Law

After the American Revolution, the founders of this new nation produced a most remarkable document we know as the U.S. Constitution. The Constitution established a system of government to be directed by laws and principles. One principle is known as the separation of powers. To prevent the accumulation of too much power into too few hands, the U.S. Constitution divides government power into three branches: the legislative, the executive, and the judicial. The legislative branch makes or enacts the law; the executive branch enforces the law; and the judicial branch interprets and applies the law.

Although the three branches must function together cohesively to fulfill the obligations of government, each branch must perform its duties independently. Every time a court does its job as it is supposed to, independent of the other branches of government and according to the law, that court is playing its part in the constitutional plan.

Underlying the separation of functions into three branches is the theory of checks and balances. The founding fathers believed that if governmental power was divided into three branches, no one branch would be able to dominate the other two, and thereby impose its own will on an unconsenting public. Separation of powers, while sometimes cumbersome and sometimes the

source of tension between the government’s branches, is one of the fundamental principles of American democracy. Keeping the branches and their functions separate is one of the keys to the system of checks and balances.

The first 10 amendments to the U.S. Constitution are known as the *Bill of Rights*. These rights are intended to protect individual citizens against government tyranny and lawlessness. American courts, from their inception, are charged with interpreting the meaning of such protections as freedom from unwarranted searches and seizures, the right to counsel, the right to trial by jury, and the privilege against self-incrimination.

### C. Federal and State Law

Like the U.S. Constitution, the Texas Constitution also establishes three branches of government: the legislative, the executive, and the judicial. As a component of the judicial branch, municipal courts are unique in that they are the only state trial courts to operate at the city-level of government. Nevertheless, despite their existence at the local level of government, municipal courts, like all state courts, are obligated to follow federal law and to give precedence to the U.S. Constitution over federal law, treaties, and state law. U.S. Const. Art. VI. Accordingly, in adjudicating cases, municipal courts are required to construe and apply common law, both federal and state law, and local ordinances.

Q. 1. What is meant by the statement: “The American judicial system is an adversarial system”?

\_\_\_\_\_

Q. 2. Define common law and give an example applicable to municipal courts. \_\_\_\_\_

\_\_\_\_\_

Q. 3. Describe the role of each branch of government. \_\_\_\_\_

\_\_\_\_\_

Q. 4. Why did the Founding Fathers design a government based on the principle of separation of powers? \_\_\_\_\_

\_\_\_\_\_

Q. 5. What are the first 10 amendments to the Constitution called? \_\_\_\_\_

True or False

Q. 6. Since municipal courts are local courts, they do not have to follow the statutes and rules passed at the state and federal levels. \_\_\_\_\_

## PART 2 TEXAS JUDICIAL SYSTEM

Please refer to *Appendix A* to see a graphic representation of the court structure of Texas.

### A. Court Structure of Texas

There are two basic types of courts in Texas: trial courts and appellate courts. The structure of the present court system was established in 1891 by an amendment to the Texas Constitution. The amendment established a bifurcated system for appellate courts, which means that the

highest appellate court handling civil appeals in Texas and the highest appellate court handling criminal appeals are two separate courts—the Texas Supreme Court and the Texas Court of Criminal Appeals.

## **1. Appellate Courts**

The appellate courts of the Texas judicial system are:

- the Texas Supreme Court, the highest final state appellate court for civil and juvenile cases;
- the Texas Court of Criminal Appeals, the highest final state appellate court for criminal cases; and
- 14 Courts of Appeals, intermediate appellate courts for civil and criminal appeals from trial courts.

Appellate courts do not have trials or jurors, nor do they hear witnesses. Rather, these courts review the actions and decisions of the lower courts on questions of law or allegations of procedural error. In carrying out this review, the appellate courts are usually restricted to the transcripts of the trial proceedings and exhibits presented in the trial court.

### **a. The Texas Supreme Court**

The Texas Supreme Court has final appellate jurisdiction in statewide civil and juvenile cases. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit may be brought when one person feels wronged or injured by another person. An example is a lawsuit for recovery of damages suffered in a car accident. Juvenile cases in juvenile court are also civil.

In addition to hearing oral arguments and writing decisions for cases on appeal, the Supreme Court is empowered to make and enforce all necessary rules of civil trial practice and procedure. The Legislature has authorized the Supreme Court and the Court of Criminal Appeals collectively to promulgate the rules of evidence and appellate procedure used in both criminal and civil matters. The Supreme Court also has original jurisdiction to issue writs and to conduct proceedings for the involuntary retirement or removal of judges. To ensure the efficient administration of justice in Texas, the Supreme Court has many administrative duties that include:

- promulgating the rules of procedure for the Commission on Judicial Conduct and the rules for the operation of certification of court reporters;
- equalizing the dockets of the 14 Courts of Appeals; and
- supervising the operations of the State Bar of Texas.

The Supreme Court is composed of one Chief Justice and eight Justices, who are elected in partisan elections on a statewide basis for six-year terms of office. Vacancies between elections are filled by gubernatorial appointment with the advice and consent of the State Senate, until the next general election. To be eligible to serve as a justice on this court, a person must be licensed to practice law in Texas, be a U.S. and Texas citizen, be at least 35 years of age, and have been a practicing lawyer, or a judge of a court of record, for at least 10 years. Tex. Const. Art. V, Sec. 2.

## b. The Texas Court of Criminal Appeals

The jurisdiction of the Court of Criminal Appeals extends to all criminal cases heard by the intermediate courts of appeals and those criminal cases coming directly from the district courts when the death penalty has been imposed. A criminal case is a legal action brought by the government against a person charged with committing a crime. Some examples are the offenses of speeding and driving without financial responsibility.

The Court of Criminal Appeals has been authorized by the Legislature to promulgate the rules for judicial education.

The Court of Criminal Appeals consists of one Presiding Judge and eight Judges, who must have the same qualifications, and are elected in the same manner, as the justices of the Supreme Court.

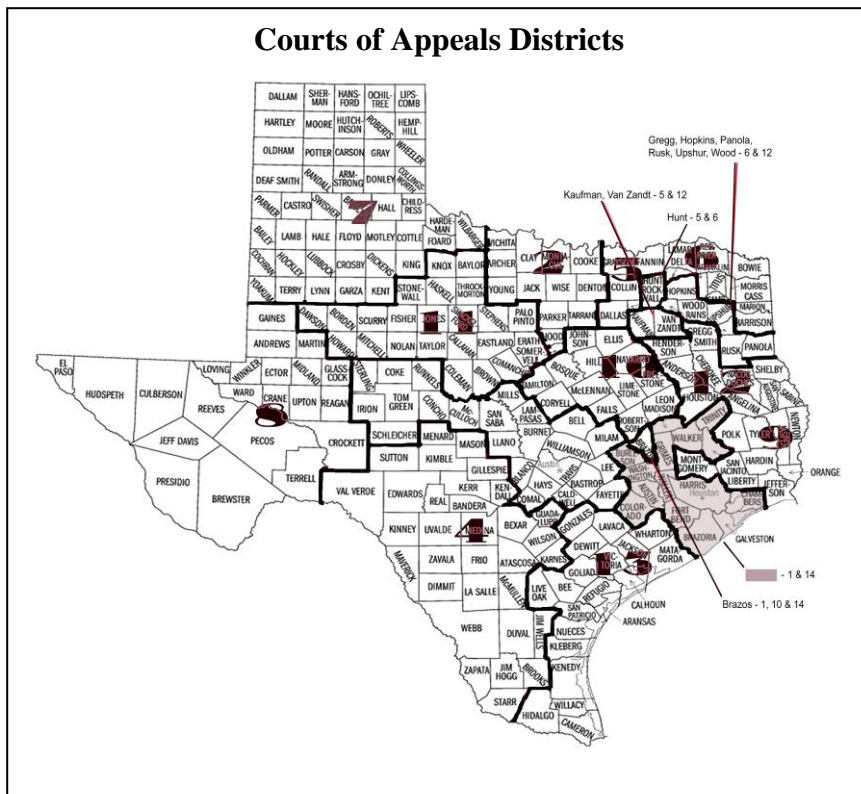
## c. Courts of Appeals

Each of the 14 Courts of Appeals hears the appeals from the trial courts located within its respective district. The appeals are based upon the “record” (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the supplementary written briefs and oral arguments of the appellate lawyers. The Courts of Appeals do not receive testimony or hear witnesses when considering cases on appeal.

Each Court of Appeals has at least three judges: a chief justice and two other justices. The Legislature, however, may increase the number whenever the workload of an individual court requires additional judges.

Judges of the Courts of Appeals are elected in partisan elections for six-year terms of office by the voters in their districts. They must have the same qualifications for office as the justices of the Supreme Court of Texas.

The Courts of Appeals are located in 13 cities. See the following map and corresponding list of numbered districts for help in identifying them all.



The Courts of Appeals are located in the following cities:

- Amarillo (District 7),
- Austin (District 3),
- Beaumont (District 9),
- Corpus Christi/Edinburg (District 13),
- Dallas (District 5),
- Eastland (District 11),
- El Paso (District 8),
- Fort Worth (District 2),
- Houston (two courts: Districts 1 and 14),
- San Antonio (District 4),
- Texarkana (District 6),
- Tyler (District 12), and
- Waco (District 10).

## **2. Trial Courts**

The trial courts are those courts in which trials are held, witnesses are heard, testimony is received, and exhibits are offered into evidence. In a criminal case, the judge or the jury determines whether the defendant is guilty or not guilty beyond a reasonable doubt of the crime alleged. Defendants in criminal cases and the parties in civil lawsuits have the right to a trial by a jury of either six or 12 local citizens. Except in capital murder cases, the parties have the right to waive a trial by jury and to have the judge presiding over the case make the final determination of guilt and sentencing.

The trial court structure in Texas has several different levels, each level handling different classifications of cases. The state trial courts of general jurisdiction are known as the district courts. The county-level courts consist of the constitutional county courts, the county courts at law, and the statutory probate courts. Municipal courts are located in each municipality and the justice of the peace courts are located in precincts of each county of the state. Municipal, justice of the peace, and county courts are courts of limited jurisdiction.

### **a. District Courts**

District courts are courts of general jurisdiction. They generally have original jurisdiction in all criminal cases of the grade of felony (the most serious crimes), misdemeanors involving official misconduct, and misdemeanors transferred to the district court under Article 4.17, C.C.P., involving non-attorney judges in a county court. The civil jurisdiction is more complex and extends to cases of divorce, suits for title to land or enforcement of liens on property, contested elections, suits for slander or defamation, and all civil matters wherein the amount in controversy is \$200 or more. In counties having statutory county courts at law, the district courts generally have exclusive jurisdiction in civil cases where the amount in controversy is \$10,000 or more, and concurrent jurisdiction with the statutory county courts at law in cases where the amount in controversy exceeds \$500, but is less than \$10,000.

The district courts hear contested matters involved in probate cases and have general supervisory control over the county commissioners. In addition, district courts have the power to issue writs of habeas corpus, mandamus, injunction, certiorari, sequestration, attachment, garnishment, and all other writs necessary to enforce their judgments.

Appeals from judgments of district courts are to the Court of Appeals that has jurisdiction over the district court.

### **b. County-Level Courts**

The Texas Constitution provides for a county court in each county. Generally, “constitutional” county courts have concurrent jurisdiction with justice of the peace courts in civil cases where the amount in controversy exceeds \$200, but does not exceed \$10,000; general jurisdiction over probate cases; and exclusive original jurisdiction over misdemeanors where punishment for the offense is by fine exceeding \$500 and/or a jail sentence not to exceed one year. County courts have jurisdiction over Class A misdemeanors (a fine not to exceed \$4,000 and/or a jail sentence of up to one year) and B misdemeanors (punishable by a fine not to exceed \$2,000 and/or a jail sentence not to exceed 180 days).

County courts generally have appellate jurisdiction (usually by trial de novo, which means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been previously rendered) over cases tried originally in the justice of the peace courts and municipal courts. Original and appellate judgments of the county courts may be appealed to the appropriate Court of Appeals.

The Constitution provides that the county judge “shall be well informed in the laws of the State . . . .” This has been interpreted to mean that neither formal study of law nor a license to practice law is a necessary qualification to hold the office of county judge.

Under its constitutional authorization to “establish such other courts as it may deem necessary...[and to] conform the jurisdiction of the district and other inferior courts thereof,” the Legislature has created statutory county courts and statutory probate courts, primarily in metropolitan counties, to provide assistance to the single “constitutional” county court. Some statutory county courts have family law jurisdiction. County court at law judges are required to be at least 25 years old, a resident of the county, and a licensed attorney with four years experience practicing law.

### **c. Municipal Courts**

Under its constitutional authority to create “such other courts as may be provided by law,” the Legislature has created municipal courts in each municipality in Texas Sec. 29.002, G.C. Presently, municipal courts are operating in approximately 916 cities in Texas. Metropolitan cities usually have more than one municipal court. These courts have original and exclusive jurisdiction over violations of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and on property owned by the city in the city’s extraterritorial jurisdiction. There is one exception to municipal court’s exclusive original jurisdiction over city ordinance violations and that exception is found in Sec. 4.11(c), C.C.P. This statute provides that justice courts have concurrent jurisdiction with municipal courts in city sign ordinance violations arising under Sec. 216.902, L.G.C., when the violation occurs in the city’s extraterritorial jurisdiction. Such violations are generally punishable by fines of up to \$500, but fines of up to \$2,000 may be established for violations relating to fire safety, zoning, public health, and sanitation. Municipal courts also have concurrent jurisdiction with justice courts in misdemeanor cases occurring within the territorial limits and on property owned by the city in the city’s extraterritorial jurisdiction that are punishable by fine and such sanctions, if any, as authorized by statute not consisting of confinement in jail or imprisonment. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

Municipal courts have limited civil jurisdiction. One example of civil jurisdiction is the court’s authority to hear cases and assess civil penalties in dangerous dog cases under Chapter 822 of the Health and Safety Code. Furthermore, certain municipalities may declare the violation of city ordinances relating to parking and stopping vehicles to be civil offenses and prescribe civil penalties. These cities must establish an administrative adjudication hearing procedure for these offenses.

Municipal judges also serve as magistrates of the State. In this capacity, the municipal judge has authority to issue warrants for the apprehension and arrest of persons charged with the commission of an offense. As a magistrate, the municipal judge may issue search warrants, arrest

warrants, and emergency protection orders; hold preliminary hearings; discharge an accused; or set bail, when applicable.

The majority of municipal courts are not courts of record, and appeals from non-record courts go to the county court, the county court at law, or the district court for trials de novo.

Under the authority of Chapter 30 of the Government Code, a municipal court may become a court of record. In a court of record, a formal record and transcript are made of the proceedings in the trial and appeals are made on the record. Such appeals are generally heard in the county court or county court at law, but the Legislature has authorized both the City of El Paso and the City of Dallas to create municipal courts of appeals to hear appeals from those cities' municipal courts. The statutes creating these municipal courts of record require that the judges be licensed to practice law in Texas. No such provision is required of other municipal judges.

On September 1, 2007, Chapter 469 of the Health and Safety Code was amended to allow municipalities to establish drug court programs. In the past, only counties could establish these types of courts. Drug courts are special courts that handle only offenses in which an element is the use or possession of alcohol; the use, possession, or sale of a controlled substance, controlled substance analogue, or marihuana; or an offense in which the use of alcohol or a controlled substance is suspected to have significantly contributed to the commission of the offense, and the offense did not involve the possession or use of a firearm or other dangerous weapon, the use of force against another, or the death of or serious bodily injury to another. Municipal drug courts' jurisdiction would include offenses such as: public intoxication, possession of drug paraphernalia, driving under the influence of alcohol by a minor (DUI), purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor. Other fine-only offenses which could be heard in drug courts are those where alcohol or a controlled substance is suspected to have significantly contributed in the commission of the offense.

Municipal courts occupy a unique position in the Texas judicial system. More citizens come into personal contact with municipal courts than with all other Texas courts combined. The reason for the vast majority of appearances is for traffic citations. For most citizens—whether appearing as a defendant, witness, or juror—this may be their only personal contact with the judicial system, and as such, this contact in municipal court will form a lasting impression of the justice system as a whole.

#### **d. Justice of the Peace Courts**

The Texas Constitution provides that each county is to be divided into at least one and not more than eight justice precincts. In each precinct, there should be one or two places for justices of the peace. A justice of the peace is elected by voters of the respective precinct of the county in partisan elections for four-year terms of office. There are no special statutory or constitutional qualifications to hold this office. Approximately 820 justice of the peace courts are in operation today in Texas.

Justices of the peace have original jurisdiction in misdemeanor criminal cases where the punishment upon conviction may be fine-only or by fine and, as authorized by law, sanctions not consisting of confinement or imprisonment. Justice courts have concurrent jurisdiction in one instance over municipal ordinance violations involving the regulation of signs in a city's

extraterritorial jurisdiction. Art. 4.11(c), C.C.P. In addition to the jurisdiction and powers provided by the Constitution and other laws, the justice court has original jurisdiction of the following:

- civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than \$10,000, exclusive of cost. Sec. 28.003, G.C.;
- cases of forcible entry and detainer;
- foreclosure of mortgages; and
- enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction.

However, justice courts do *not* have jurisdiction over:

- a suit on behalf of the State to recover a penalty, forfeiture, or escheat;
- a suit for divorce;
- a suit to recover damages for slander or defamation of character;
- a suit for trial of title to land;
- or a suit for the enforcement of a lien on land. Sec. 27.031, G.C.

Trials in justice of the peace courts are not of record. Appeals from these courts are trial de novo in the county court, the county court at law, or the district court.

Like municipal judges, justices of the peace are also magistrates and therefore have authority to issue arrest warrants. As a magistrate, among other things, the justice of the peace may hold preliminary hearings, discharge the accused, remand the accused to jail, and set bail, when applicable.

## **B. Cooperation Within the Judicial System**

Each court is a member of the judicial branch of government that must conduct its business separately from and independently of the other two branches of government.

Courts are bound to interpret laws and apply them to the facts presented by the cases tried. They are bound by laws enacted by the Legislature and by rules promulgated by bodies given rule-making authority, like the Texas Rules of Evidence and Texas Rules of Appellate Procedure. Courts must also apply the principle of stare decisis that makes legal precedent of higher courts binding on lower courts. It requires lower level trial courts to respect and follow the decisions of all Texas appellate courts and regional federal courts, when applicable, even when the individual judge disagrees with the decisions.

Courts must also be aware of and work with other agencies within the judicial system. For instance, functions such as administrative adjudication of parking offenses or supervision of defendants performing community service are usually done by other persons or agencies—not the judge or the clerk. These functions, however, substantially impact the courts' functions.

So, while it is true that courts must do their jobs relatively independently, it is equally true that courts do not operate in a vacuum. They must work within the framework of the judicial system and within the three-branch system of government.

### C. Funding

The state provides full funding and salaries for the Texas Supreme Court and the Texas Court of Criminal Appeals and provides the salaries for the appellate and district judges of Texas. Some counties supplement this base salary. Counties pay the costs of “constitutional” county courts, county courts at law, justice of the peace courts, and the operating costs of district courts. The cities finance the operation of the municipal courts and the salaries of all municipal court personnel.

- Q. 7. What are the two highest appellate courts in Texas? \_\_\_\_\_
- Q. 8. Explain the difference between a civil and criminal matter. \_\_\_\_\_  
\_\_\_\_\_
- Q. 9. Which is the highest Texas appellate court with jurisdiction over juveniles? \_\_\_\_\_
- Q. 10. How are Texas appellate judges selected and how long are their terms? \_\_\_\_\_  
\_\_\_\_\_
- Q. 11. How are appellate courts different from trial courts? \_\_\_\_\_  
\_\_\_\_\_
- Q. 12. What is meant by trial de novo? \_\_\_\_\_  
\_\_\_\_\_
- Q. 13. Explain how the jurisdiction of justice courts is different from municipal courts. \_\_\_\_\_  
\_\_\_\_\_
- Q. 14. Why are lasting impressions of the American justice system often formed in municipal courts? \_\_\_\_\_  
\_\_\_\_\_
- Q. 15. What court(s) have jurisdiction in the cases described below:
- An appeal from a district court \_\_\_\_\_
  - A divorce case \_\_\_\_\_
  - A speeding ticket \_\_\_\_\_
  - A felony murder case \_\_\_\_\_
  - An appeal from a municipal court \_\_\_\_\_
  - A child support or child custody case \_\_\_\_\_
  - An ordinance violation \_\_\_\_\_
  - An appeal from justice courts \_\_\_\_\_
  - A death penalty appeal \_\_\_\_\_
  - An appeal from a municipal court of record \_\_\_\_\_

## PART 3 THE MUNICIPAL COURT ROLE IN LOCAL GOVERNMENT

### A. Separation of Powers

The separation of powers doctrine applies at the municipal level just as it does at the state and federal levels. The mayor, city manager, and operating departments are the local equivalent to the federal executive branch that is the president and all the executive agencies. The city council is the legislative branch, which enacts laws. The municipal court is the judicial branch. Each of these branches must operate independently of each other. This means that the municipal court must not operate as a rubber stamp for the mayor, the city manager, the police department, or any other operating department. The defendant and defense counsel should receive the same fair treatment and consideration from the court that the police and prosecution receive.

A common complaint regarding municipal courts is that they engage in “cash register justice.” A significant portion of the budget for many cities comes from fines collected in municipal court. But a judge may *not* consider the raising of revenue as an aspect of judicial duties. The judge should *not* increase fines for the purpose of enhancing his or her position before the city council as a revenue producer.

Section 720.002, T.C., prohibits state agencies and political subdivisions from imposing traffic revenue quotas on municipal or county court judges and justices of the peace. While the prohibition does not keep cities from getting budget information or projections from courts, it does forbid the establishment or maintenance of a system for evaluating, promoting, compensating, or disciplining these judges on the basis of revenues collected from traffic convictions.

In the 81<sup>st</sup> Regular Legislative Session, the Legislature repealed Subsection (c) of Sec. 720.002, T.C. That section provided that municipalities could consider the amount of money collected from a municipal court when evaluating that judge’s performance. Clearly, this prior subsection undermined the objective of an unbiased judiciary and it is no longer in effect.

### B. Relations with City Departments

Municipal courts should recognize the necessity for cooperating with the other departments in administrative and other areas wherever possible without compromising the independence or integrity of the judiciary. The following section outlines some of the more pertinent areas of interdepartmental relations for municipal courts.

#### 1. Mayors and City Managers

Judges should be aware that mayors and city managers have to be concerned with revenues—both expenditures and collections—as the executive branch, they are responsible for the city’s budget. Because the court’s budget comes out of the city’s budget and because some of the fines and fees collected by the court are deposited in the municipal treasury, judges and clerks have some concerns and responsibilities regarding revenue. The recording, handling, and reporting procedures must meet city approval and will be audited by the city.

Nonetheless, judicial decisions may only be made on the basis of facts proved by evidence presented at trial and the applicable law(s). For instance, a judge may not ignore evidence and

law and assess a fine in a case solely because the city needs money. Likewise, if the city council passes an ordinance, council members should not ask the judge to apply the law selectively (i.e., charge one defendant the maximum, but let another go free). A mayor or council member must not privately tell the judge that a certain defendant is “a really bad guy” and should be assessed maximum punishment. The clerk must be careful to avoid becoming the messenger of these facts, thereby influencing the judge unethically.

## **2. City Attorneys and Prosecutors**

The municipal court and the city attorney interact during the prosecution of municipal court cases. The city attorney or a deputy city attorney has a duty to prosecute the State’s case in municipal court. Close coordination with the city attorney’s office is necessary, particularly in the scheduling and reviewing of cases and the preparing and reviewing of complaints.

It is the prosecutor who decides which complaints should be filed. The city attorney, not the judge, should advise and direct peace officers in preparing criminal cases. The court must remain apart from investigating or filing cases, to preserve impartiality for judging the evidence presented at trial. Although it is a common practice for court clerks to prepare complaints filed in court, it should be remembered that it is the responsibility of the State, through the city attorney, to decide which cases to prosecute.

## **3. Police**

Law enforcement is part of the executive branch of government, and should be educated in the constitutional rights guaranteed to all citizens, even those accused of crimes. Police officers may look to the city attorney for advice in investigating and preparing for criminal cases.

In cities where the municipal court clerk also serves as police dispatcher and where the offices of the court are located in the same building as the police department, conflict is possible. Judges, clerks, and police departments must exercise great care to honor the separateness of each department. Intermingling creates the appearance of impropriety, if not actual impropriety, and adversely affects public perceptions of both offices. The court should strive to keep the departments separate. The separation emphasizes and enhances the integrity and impartiality of the court as well as the integrity of the police department.

A more serious difficulty occurs when the judge or clerk fraternizes with the police officers who will be testifying in court. In order to maintain independence and impartiality, neither the judge nor the clerk should ever discuss any case with a police officer outside the courtroom.

Often citizens come to the court to file “citizen complaints.” When citizens wish to present complaints or to file criminal charges, they should go to the police department or the prosecutor, but not directly to the court. The police have the power and duty to investigate, which the court lacks, and may make a professional determination of whether or not to recommend the filing of criminal charges. This procedure keeps the court from becoming embroiled in controversy or stepping outside the judicial boundaries. It also preserves the court’s impartiality for cases that result in trial.

Various city department officials may file code violation complaints in municipal court in addition to or in the absence of code enforcement officers. The acceptance of these complaints for prosecution is a matter for the prosecutor to determine, not the court. As in all cases, the court

should remain impartial in hearing evidence in these cases. City employees are no more entitled to special consideration than are peace officers.

True or False

- Q. 16. City managers may establish traffic revenue quotas as part of evaluating the court's performance. \_\_\_\_\_
- Q. 17. It is proper for a court to follow the recommendations of a city auditor regarding recording, handling, and reporting procedures for court costs and fines. \_\_\_\_\_
- Q. 18. Judges may consider factors related to revenue for the city in determining the fine and court costs in an individual's case. \_\_\_\_\_
- Q. 19. Prosecutors help investigate and decide what complaints are filed in court. \_\_\_\_\_
- Q. 20. The judge and clerk may help the prosecutor, police officer, and/or code enforcement officer investigate a crime. \_\_\_\_\_

## **PART 4**

### **BASIC MUNICIPAL COURT ORGANIZATION**

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities have been empowered to enact charter and ordinance provisions not inconsistent with state law that prescribe structural details of local court organization. Texas statutes also provide general-law cities with some choices regarding the organization of the court. Thus, variations exist throughout the state with regard to court organization. The basic organization of the municipal court consists of judges, court clerks, prosecutors, bailiffs, warrant officers, and defense counsel.

#### **A. Officers of the Court**

##### **1. Judge**

The judge is responsible for presiding over trials and other court proceedings, for performing certain magistrate functions, and for the general administration of the court. The judge must be impartial, ensure that justice is done, and rule on matters presented by the parties. The judge is *not* an adversary and must decide questions only on the basis of law. He or she must never assume the role of prosecutor or of defense counsel nor act as a special advisor to the police or as a rubber stamp of law enforcement. The judge must never be influenced by the city to produce revenue or to enforce laws selectively.

The judge must allow the prosecution and the defense, as well as all other components of the system, to perform their duties vigorously, but always within the limits allowed by law. The judge will rely heavily on administrative support by the clerk. However, the judge can never delegate judicial duties to the clerk. The judge must not allow the clerk to influence judicial decisions or the verdict. Only the evidence presented and the applicable law can be the legitimate basis for any judicial decision.

Where there is more than one judge in a municipality, one judge is generally designated the presiding judge or the administrative judge. As the chief administrator for the court, the presiding judge is responsible for organizing and scheduling court activities, developing and maintaining policies and procedures, allocating the workload, assigning cases to the various courts, supervising court support personnel, and performing a variety of other administrative functions.

While the presiding judge establishes judicial policy and general court procedures, the clerk helps to implement those policies and procedures. Despite the close working relationship between the judge and clerk, there must be a clear separation between judicial and administrative functions.

### **a. Qualification and Selection**

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities.

- Home-rule cities provide that the judge may be selected in the manner prescribed by the city charter. Sec. 29.004(a), G.C. The selection may be by election or by appointment.
- General-law cities may provide for the appointment or election of the judge by ordinance. The election of judges must be conducted in the same manner and for the same term as the mayor.

### **b. Term of office**

A municipal judge's term of office is two years unless the municipality sets a term of four years. Tex. Const. Art. XI, Sec. 11, and Sec. 29.005, G.C. The term of office for judges in municipal courts of record is established by the special statute that created them.

See TMCEC Study Guide Level I, *Authorities and Duties* for a detailed discussion on the role of the judge.

## **2. Court Clerk**

Court clerks look to the judge for direction in matters pertaining to overall court policy and judicial procedures. The clerk's primary responsibilities include processing the clerical work of the court; administering daily operations of the court; maintaining court records, including the docket; coordinating the scheduling of cases; and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed, written administrative duties for a clerk by the governing body, the judge may assign various administrative duties.

The court clerk must fulfill all duties impartially and competently. Within the role of administratively assisting the court as a whole, the court clerk is responsible for seeing that the court's papers are accurate, orderly, and complete. While the clerk's duty is to serve all participants equally in the legal system, the clerk must remain independent of any particular participant. This means that the clerk must be as courteous and helpful to defense lawyers as prosecutors and to defendants as police officers. The clerk must never attempt to influence the outcome of any case.

Each participant has a right to know and understand the court's procedures. The court clerk can have a tremendous impact on participants' perceptions of the justice system. The clerk should provide participants with information on court procedures while avoiding giving legal advice.

The court clerk is responsible for and involved in the planning, scheduling, and coordinating of the clerical activities of the municipal court and performs a variety of functions that are fundamental and important to the overall administration of non-judicial functions. The responsibility of the court clerk's position and the scope of duties have greatly increased in recent years. The professionalism, timeliness, and accuracy of the court clerk's actions are important to the proper operation of the municipal court.

#### **a. Qualification and Selection**

The city council may establish the qualifications for the position of the court clerk. Qualifications vary greatly depending on the size and workload of the court, the nature of the cases processed, the size of the staff and how the workload is distributed, and whether the court's work is done by computer or manually. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, knowledge of accounting or bookkeeping, office and personnel management skills, and knowledge of caseflow management are most desirable. Where courts have automated court records, clerks may also be required to possess certain computer skills.

In a general-law city, the court clerk is usually appointed by the city council. However, some cities provide, by ordinance that the city secretary serve as *ex officio* court clerk. The city secretary who serves in an *ex officio* capacity may be authorized to appoint a deputy to serve as court clerk. When a city elects the municipal judge, the clerk is elected in the same manner unless an ordinance designates the city secretary to serve as court clerk. In a home-rule city, the charter provides for the appointment, election, or hiring of the court clerk. Sec. 29.010(a) and (d), G.C.

The position of deputy court clerk is not mentioned in statute. Generally, deputy court clerks are hired employees.

#### **b. Compensation**

The salary of the court clerk can be prescribed by the city charter in home-rule cities. Such compensation is paid out of the city treasury. The city council sets the court clerk's salary, like the other officers of the court. The Texas Municipal League (TML) publishes an annual salary survey. Contact TML at 512.231.7400 or go to their website: [www.tml.org](http://www.tml.org) for more information.

See TMCEC Study Guide Level I, *Authority and Duties* for a more extensive description of the clerk's duties and the contrast between judicial and ministerial duties.

### **3. Prosecutor**

The prosecutor's role is to seek justice. In the broad view, the prosecutor represents the public's interest in enforcing the criminal law strictly but fairly. The prosecutor also has a duty to maintain public respect for the system. The Code of Criminal Procedure provides that it is the primary obligation for municipal court prosecutors not to convict but to see that justice is done. Art. 45.201, C.C.P.

The prosecutor, who may be the city attorney or a deputy city attorney, is responsible for investigating and prosecuting all cases in municipal court. This includes preparing all complaints. It is the prosecutor who must present and prove the criminal charges filed in the State's name.

**a. Term of Office**

The city attorney's term, subject to conditions regarding removal, may be set by ordinance, charter, or the agreement for employment. Deputy city attorneys assigned as municipal court prosecutors work at the pleasure and discretion of the city attorney.

**b. Duties and Responsibilities**

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs basically the same role as the prosecuting attorney in other criminal trial courts. Although most cases in municipal courts are less complex than those in county and district courts, the volume of cases is much greater. The prosecutor's time for case preparation and consultation with police officers, witnesses, and complainants is usually limited. In municipal court, the prosecutors have discretion over decisions such as which cases to prosecute and trial strategy, but prosecutors may not dismiss charges or cases, except upon written grounds and with the judge's approval. Arts. 45.201 and 32.02, C.C.P.

Duties of the city prosecutor are as follows:

- investigate the facts surrounding alleged offenses and decide whether to file charges;
- prepare and draft complaints. The court clerk may assist the prosecutor in preparing routine complaints. However, ultimate responsibility for the legal sufficiency and accuracy of complaints is the prosecutor's;
- administer oaths to persons filing complaints before the court (Art. 45.019(e), C.C.P.);
- prepare and present the State's case to the court;
- arrange for the appearance of the State's witnesses, including requests for subpoenas and attachments;
- file motions with the court that may be necessary to present cases fully and to see that justice is done;
- request dismissal of cases under proper circumstances and cite the legal grounds for dismissal;
- advise the police department in case preparation, legal procedures, and requirements, and other legal questions; and
- discuss pending cases with defendants or, if represented by counsel, with their attorneys prior to the courtroom hearing.

With the county attorney's consent or assistance, prosecutors are statutorily allowed to prosecute appeals. Art. 45.201, C.C.P. The prosecutor may make arrangements with the county attorney or criminal district attorney and the county judge to prosecute municipal court appeal cases.

#### **4. Bailiff**

In many cities, a police officer serves as bailiff. In some cities, the bailiff may be appointed by the judge. In the larger cities with more than one court, the presiding judge usually appoints the bailiffs.

##### **a. Qualifications**

There are no statutory qualifications for bailiffs. Minimum qualifications for the position of bailiff commonly include the following: high school graduation or G.E.D.; knowledge of the operations, procedures, and decorum of the municipal court; and experience in dealing with the public.

##### **b. Duties and Responsibilities**

The bailiff is directly responsible to the judge and has the duty of maintaining order, security, and decorum while the court is in session. The bailiff generally opens and closes court sessions. He or she may be assigned other duties, including maintaining custody of and escorting those convicted to the clerk to arrange payment. Bailiffs also administer oaths to witnesses (if directed and authorized by the judge); attend to the jury, keeping them together and separate from all other citizens during deliberations; carry written communications between the jury and the judge; and inform the judge when a verdict has been reached. Bailiffs may also assist defendants and other citizens present by explaining court procedures and answering questions. Also, they relay messages and perform other tasks assigned by the judge.

#### **5. Warrant Officer**

The primary role of the warrant officer is to serve all processes or papers issued by a municipal court, in other words, to deliver writs or summons to the party to whom it is addressed.

In small and medium-sized cities, this function is usually conducted by the police department and sometimes by those specially designated as warrant officers. As peace officers, warrant officers must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Ch. 1701, C.C.P. and T.A.C.

The Code of Criminal Procedure provides that all process issuing out of the municipal court shall be served by a police officer or city marshal under the same rules that apply to service by sheriffs and constables of process issuing out of justice court. Art. 45.202, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of \$10 to \$200 for contempt of court. Art. 2.16, C.C.P.

#### **6. Defense Counsel**

The role of defense counsel is to represent a client zealously within the bounds of the law. Like the prosecutor, the defense counsel has a duty to maintain public respect for the system. Even citizens who have committed crimes are entitled to have their rights respected and to be treated fairly. Upon a guilty verdict, defense counsel has a duty to argue for fair punishment.

True or False

- Q. 21. The judge plays an adversarial role in court. \_\_\_\_\_
- Q. 22. If there is not a prosecutor, the judge or the clerk should serve as the prosecutor and represent the State. \_\_\_\_\_
- Q. 23. The prosecutor, with the consent of the judge, has the authority to dismiss a case. \_\_\_\_\_
- Q. 24. The prosecutor is responsible for preparing and drafting complaints and may ask the clerk for assistance. \_\_\_\_\_
- Q. 25. Both a bailiff and a warrant officer must comply with TCLEOSE training and standards.  
\_\_\_\_\_

## PART 5 STATEMENT OF OFFICER AND OATH OF OFFICE

It is imperative that each official swear to and sign a statement of officer and an oath of office upon each appointment or election and upon reappointment or reelection.

### A. Statement of Officer

Upon appointment or election and before assuming the duties of office, all judges and clerks of the court must first file a sworn statement of officer with the records of the office. Usually, the city secretary maintains these records.

Appointed judges and clerks of the court must swear to and sign the following statement:

*I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, of value promised to pay, contributed, or promised to contribute any money, or thing of value, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God. Tex. Const. Art. XVI, Sec. 1.*

Elected judges and clerks of the court must swear to and sign the following statement:

*I, \_\_\_\_\_, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected so help me God. Tex. Const. Art. XVI, Sec. 1(c).*

### B. Oath of Office

After filing one of the above statements, the official, whether elected or appointed, must swear to the following oath of office:

*I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of \_\_\_\_\_ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God. Tex. Const. Art. XVI, Sec. 1(a).*

The oath is filed with the city secretary.

Q. 26. How often must the statement of officer and oath of office be filed? \_\_\_\_\_

Q. 27. Which must be filed first: the oath of office or the statement of officer? \_\_\_\_\_

## **PART 6 IMAGE OF THE COURT**

### **A. Public Perception**

Image is an important part of public perception. Although the image of the municipal court is affected by many different factors, professionalism and impartiality of the court staff are perhaps the most important traits that command respect.

### **B. Court Decorum**

It is essential that judges and clerks conduct themselves and their courts with the utmost decorum and dignity. Decorum requires observance of correct judicial procedure and custom, as well as exercising courtesy before everyone who appears in court. For the court to be effective, it must deserve the respect of the people. Courteous behavior does not guarantee that every person will reciprocate, but it does entitle the court to command that people behave correctly when they are treated with respect.

The fact that the judge and court staff must remain neutral does not mean that they should be detached from the public. Many courts have adopted an innovative management style to running their courts where all defendants, witnesses, attorneys, victims, and staff from cooperating departments are viewed as customers.

### **C. Court Operations**

The court must strive to be accessible to perform its ministerial, clerical, judicial, and magisterial functions by adopting regular hours and being on call for hardship or emergency cases. The court should inspect the physical site and ensure that it is accessible to persons with disabilities.

The physical appearance of the municipal court significantly influences the attitudes of those appearing before the court and the morale of the officials of the court. The court should have facilities that encourage public respect and confidence in the judicial system.

The location of the municipal court is a matter for each city to decide according to its local conditions and needs. An ideal location would be in a separate public building or portion of city hall. An alternative might be to utilize the city council chambers or a city auditorium for the courtroom.

Some municipalities believe that it is convenient to position the court and police department adjacent to each other or in the same building to facilitate the transfer of prisoners to and from the jail. This may be acceptable if the two agencies are completely divided, preferably with separate outside entrances for the police department and the court. The court should not be located within the confines of the police department or the police chief's office. The appearance

of collaboration between the two can be damaging. Imagine the perspective of a citizen accused of a traffic offense who might appear in court. If the court's workplace is the same workplace as the officers who wrote the citation or filed the complaint, will citizens be encouraged to believe they will get a "fair shake," a hearing before a neutral and impartial judge? Will citizens be encouraged to believe that the court has not been influenced by officers' comments either among themselves or to the court staff?

In the case of part-time judges, the court should not be situated in the judge's other place of employment, in the judge or clerk's home, or in any other place that might discourage public attendance or respect. Court should be held in a place, even though it may be humble, that is separate from other operations and devoted for that time only to hearings to determine facts, apply laws, and administer justice.

Q. 28. Explain, in your own words, judicial decorum. \_\_\_\_\_

Q. 29. If a court is located near the police department, what are some steps that you can take to maintain a clear separation between the court and law enforcement? \_\_\_\_\_

## **PART 7 SUPPORTIVE AGENCIES AND ORGANIZATIONS**

Various state agencies, in addition to the Texas Municipal Courts Education Center, are available to lend assistance to municipal courts. The diverse agencies and courts that comprise the Texas justice system must work cooperatively and yet with some measure of independence.

There is interaction and cooperation among municipal courts, various state agencies, and professional organizations where duties overlap and interface. Some of those agencies are profiled here.

### **A. Attorney General's Office**

The Attorney General created a Municipal Affairs Division in 1992 to work with cities to address their issues and resolve problems. The staff is available to discuss municipal issues with court staff members. The telephone number is 512.475.4683.

The Attorney General's Office publishes legal opinions on how laws might be interpreted when a provision is ambiguous or contradicts another part of the law. Assistance or copies of opinions may be obtained at P.O. Box 12548, Austin, Texas 78711-2548 or by calling 512.463.2110. These opinions are also available online: [www.oag.state.tx.us](http://www.oag.state.tx.us). Although city officials do not have standing to request that the Attorney General issue an opinion, the letter opinion process *is* available. Although less authoritative, it is quicker than the formal opinion process and still provides a source of guidance.

Municipal courts are excellent local dissemination sites for information on crime victims' compensation. The Attorney General's Office administers the Crime Victims Compensation Fund that provides benefits to crime victims. For additional information, call 800.983.9933.

## **B. Comptroller's Office**

The Comptroller's Office is ultimately responsible for the collection of court costs and for their final distribution. They receive municipal court's quarterly reports. The Comptroller has staff who are available to assist municipal courts and to answer questions about collecting and reporting state court costs on criminal convictions. You may call the Local Government Assistance Division of the Comptroller's Office toll-free at 800.531.5441, ext. 34276 for quarterly report information or state court costs information. The web address is [www.texasahead.org/lga/](http://www.texasahead.org/lga/).

## **C. State Bar of Texas**

The State Bar of Texas, an administrative agency of the state's judicial branch, is charged with many responsibilities, including providing educational programs for legal professionals and the public, administering the mandatory continuing education for attorneys, and managing the attorney grievance procedure.

For additional information or to learn about the grievance process against attorneys, call 800.204.2222 or 512.463.1463. The State Bar sponsors a peer assistance program for lawyers and judges with alcohol and drug abuse problems. To refer a lawyer or judge, contact 800.343.8527. The State Bar's web address is [www.texasbar.com](http://www.texasbar.com).

## **D. State Commission on Judicial Conduct**

The Commission investigates and resolves complaints filed against judges. Their work will be discussed at greater length in the study guide *Ethics*, but it is helpful to note that staff attorneys may be able to assist clerks in working through difficult ethical situations and issues they encounter. The Commission also sponsors a peer assistance program for judges troubled by substance abuse. Contact the Commission at 877.228.5750. The Commission's web address is [www.scjc.state.tx.us](http://www.scjc.state.tx.us).

## **E. Texas Court Clerks Association**

The Texas Court Clerks Association (TCCA) is a non-profit organization established to increase the proficiency of judicial administrators and clerical personnel through education and networking. TCCA offers:

- an annual meeting; and
- regional seminars offered by its local chapters.

TCCA is an affiliate of the Texas Municipal League. It sponsors the Municipal Court Clerks Certification Program in cooperation with the Texas Municipal Courts Education Center, the Texas Municipal Courts Association, and Texas State University-San Marcos.

For information on courses offered by the Texas Court Clerks Association or its local chapters contact the association through its web address at [www.texascourtclerks.org](http://www.texascourtclerks.org).

## **F. Texas Department of Public Safety**

The Transportation Code requires municipal courts to report all traffic convictions or bond forfeitures in traffic cases to the Texas Department of Public Safety (DPS). Sec. 543.203, T.C.

This report should be made in a form acceptable to DPS including the DPS form DR-18, computer records, or copies of citations with the disposition information attached.

Through the *Nonresident Violator Compact*, compliance with traffic laws may be enforced even when citations are issued to motorists who live outside Texas. The police, municipal and justice courts, and DPS cooperate to enforce it. DPS is the Texas “licensing agency” responsible for receiving reports from local authorities on failure of out-of-state motorists to comply with the terms of traffic citations.

DPS also provides and maintains statewide driving records. Such information may be helpful to the courts in assessing punishment or prescribing rehabilitative techniques for defendants. DPS may also be helpful in determining ownership of out-of-county vehicles for parking violations.

Cities may contract with DPS to deny renewal of the driver’s license of a person who has failed to appear for a complaint, citation, or court order to pay a fine involving a violation of a traffic law. To request a contract, call DPS at 512.424.5974. For information on reporting, call DPS at 512.424.2028. DPS forms can be obtained from DPS through its website at [www.txdps.state.tx.us](http://www.txdps.state.tx.us).

### **G. Texas Judicial Council/Office of Court Administration**

All Texas courts are required to report various statistical data to the Texas Judicial Council on a monthly basis. To assist in this data gathering, the Judicial Council has distributed reporting questionnaires and monthly report forms. The data collected is published in an annual report. This may be obtained by contacting the Texas Judicial Council, Office of Court Administration, P. O. Box 12066, Austin, Texas 78711 or calling 512.463.1640. The web address for the Office of Court Administration is [www.courts.state.tx.us/oca](http://www.courts.state.tx.us/oca).

The Texas Judicial Council also maintains liaisons with other judicial and administrative agencies, as well as with the Texas Legislature. Consultation with the Council can often help resolve local judicial problems.

### **H. Texas Municipal Courts Association**

The Texas Municipal Courts Association (TMCA) is a nonprofit association of municipal judges and court support personnel. Its primary purpose is to provide the municipal courts with an efficient organization for the purpose of continuing judicial education and to oversee the grant and programs of TMCEC. The Association also hosts an annual meeting, an annual awards program for outstanding judges and clerks, and an active legislative program. For additional information, contact the Center at 800.252.3718 for the name of the regional director in your area or contact the Association at [www.txmca.com](http://www.txmca.com).

### **I. Texas Municipal Courts Education Center**

The Texas Municipal Courts Education Center was formed in 1984 by the TMCA to provide extensive, regular education and training programs for municipal judges and court support personnel. The Center is financed by a grant to TMCA from the Court of Criminal Appeals out of funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund.

TMCEC conducts seminars in various locations throughout the state to facilitate compliance by municipal judges with the Court of Criminal Appeals’ order mandating continuing education on

an annual basis. Courses are offered for judges, clerks, court administrators, bailiffs, warrant officers, and prosecutors.

The Center publishes a quarterly journal, *The Recorder*, as well as a *Forms Book*, *Bench Book*, *Judges' Manual*, study guides, charts, and other materials to help judges and court support personnel perform their official duties, and understand and apply the law in its current form. The Center's staff attorneys also provide assistance to municipal judges, clerks, prosecutors, and bailiffs and warrant officers through the toll-free number at 800.252.3718.

At this time, annual attendance at judicial education programs for court support personnel is not mandated, but is highly recommended. Clerks who are participating in the Texas Municipal Court Clerks Certification Program are required to obtain certain educational requirements through TMCEC, TMCA, TCCA, or other approved providers. Specific course locations and dates may be obtained by writing or calling the Center at 800.252.3718. The mailing address is 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701. The Center's web address is [www.tmcec.com](http://www.tmcec.com). Additionally, courses, webinars and vital information is available online at the OnLine Learning Center at <http://online.tmcec.com>. Timely updates are also available by following TMCEC on Twitter and Facebook.

## J. Texas Municipal League

The Texas Municipal League (TML) provides a variety of services to municipalities and municipal courts. Seminars on various topics, including prosecution in municipal court, are conducted in conjunction with the annual meeting. The League's legal staff also provides assistance to courts on an "on call" basis. The League monitors legislation proposed and passed by the Legislature to assure that the interests of municipalities are represented. Contact the Texas Municipal League at 1821 Rutherford Lane, Suite 400, Austin, Texas 78754-5128, or call 512.231.7400. The League's web address is [www.tml.org](http://www.tml.org).

Q. 30. Indicate which office(s) to call if you need assistance:

- Training and written materials on how to run your court \_\_\_\_\_
- The proper forms to report traffic convictions or bond forfeitures \_\_\_\_\_
- Statistical data on other courts of your size \_\_\_\_\_
- Driving records \_\_\_\_\_
- Help with collecting the proper court costs \_\_\_\_\_
- General information on city government \_\_\_\_\_
- A question about judicial ethics \_\_\_\_\_
- A question about the crime victims program \_\_\_\_\_
- Questions about the court clerks certification program \_\_\_\_\_
- A legislative proposal regarding prosecutors in municipal court \_\_\_\_\_

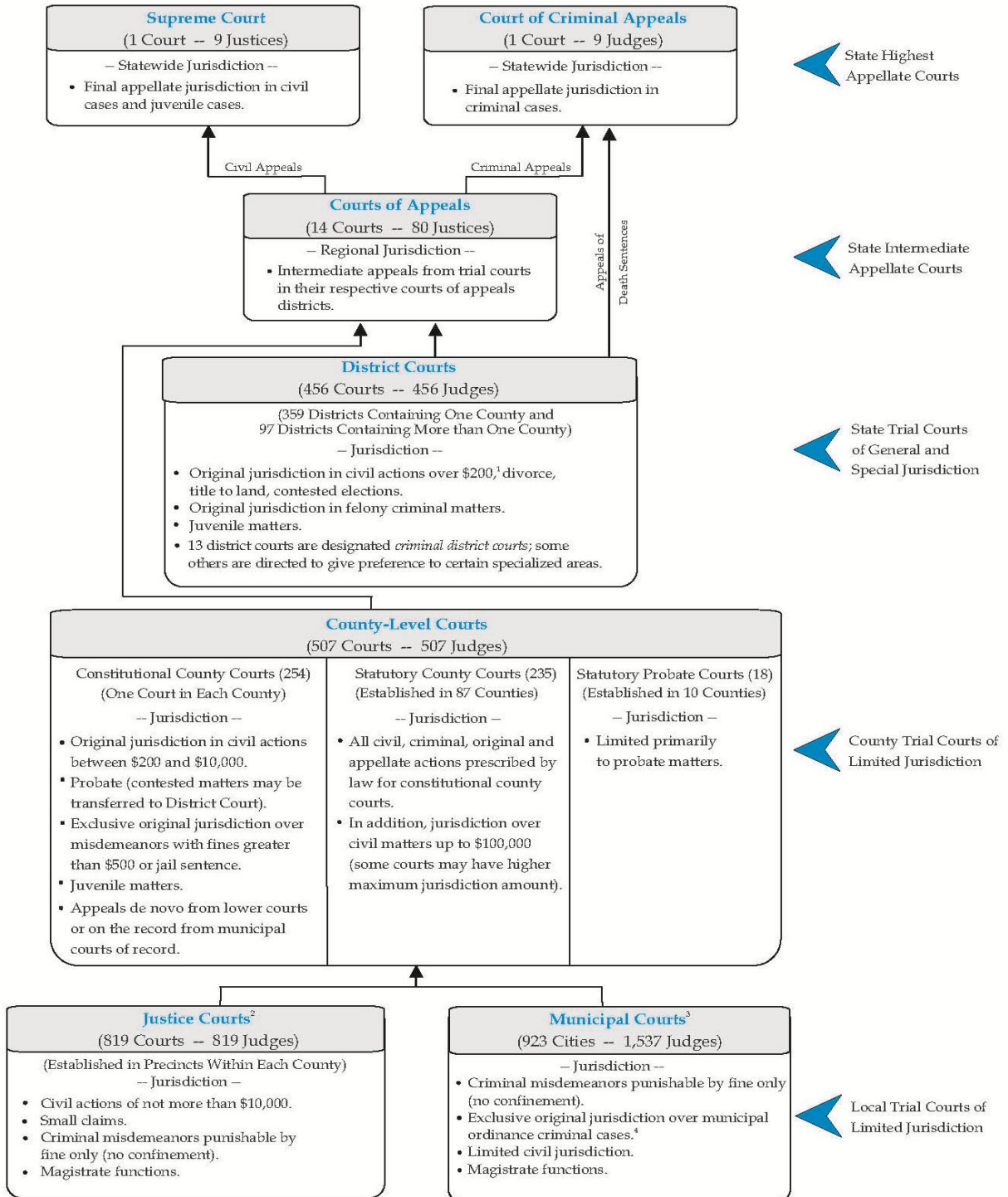
**PART 8**  
**SETTLING DISPUTES OUT OF COURT**

Courts play an important role in resolving disputes in American society, although there are many other ways to settle conflicts. Among the most common methods of alternative dispute resolution are negotiation, arbitration, and mediation. Community mediation services may be available in your area to resolve disputes between local residents in cases involving ordinance violations, such as barking dogs, disposal of trash, and disruptive conduct. The State Bar of Texas maintains a list of community dispute resolution centers and can provide you with the name of mediation training programs. To obtain a list, call 512.463.1463, ext. 2024.

# APPENDIX A COURT STRUCTURE OF TEXAS

## COURT STRUCTURE OF TEXAS

OCTOBER 1, 2011



1. The dollar amount is currently unclear.  
 2. All justice courts and most municipal courts are not courts of record. Appeals from these courts are by trial de novo in the county-level courts, and in some instances in the district courts.  
 3. Some municipal courts are courts of record -- appeals from these courts are taken on the record to the county-level courts.  
 4. An offense that arises under a municipal ordinance is punishable by a fine not to exceed: (1) \$2,000 for ordinances that govern fire safety, zoning, and public health or (2) \$500 for all others.

## ANSWERS TO QUESTIONS

### PART 1

- Q. 1. An adversarial legal system is one in which the lawsuit or case is viewed as a struggle between two sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral and dispassionately decides *questions of law* (a disputed legal contention) and, when there is no jury, *questions of fact* (a disputed factual contention). The theory of this process is that the trier of fact (judge or jury) will be able to determine the truth if the opposing parties present their best arguments and show the weaknesses in the other side's case. Decisions are based upon the evidence presented and the applicable law.
- Q. 2. Common law refers to that body of law that developed in England and the American colonies before the American Revolution. Today it is viewed as the principles, customs, and rules of action that are accepted as part of the justice system. Many common law principles have been incorporated into current codes and statutes. For instance, the waiver of trial by jury (Arts. 1.13 and 45.025, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and justification as a defense (Sec. 9.02, P.C.) all spring from the English common law.
- Q. 3. The legislative branch enacts the laws; the executive enforces the laws; and the judiciary interprets and applies the laws.
- Q. 4. The founding fathers believed that if legal power is divided into three branches, no one branch will be able to dominate the other two and impose its own theory of justice on an unconsenting public.
- Q. 5. The Bill of Rights.
- Q. 6. False.

### PART 2

- Q. 7. Texas Supreme Court and Texas Court of Criminal Appeals.
- Q. 8. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit can be brought when one person feels wronged or injured by another person. A criminal case is legal action brought by the government against a person charged with committing a crime.
- Q. 9. Texas Supreme Court.
- Q. 10. They are elected for six-year terms in a partisan election.
- Q. 11. The appellate courts hear cases based upon the "record" (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court), and the written and oral arguments of the appellate lawyers. Unlike the trial courts, the Courts of Appeals do not receive testimony nor hear witnesses when considering cases on appeal.
- Q. 12. When a case is appealed from a non-record municipal court, it is retried at the higher level as though it is a new case since there is no record of the case from the lower court. Hence, trial de novo means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been rendered.

- Q. 13. Justice courts do not have jurisdiction over city ordinances, except in one instance—a violation of a city ordinance violation that arises in a city’s extraterritorial jurisdiction involving signs. They have jurisdiction over small claims and forcible entry and detainer cases—municipal courts do not.
- Q. 14. More citizens come into personal contact with municipal courts than with all other Texas courts combined. Persons in *any* court for the first time will form a lasting impression of the justice system. Public impression of the judicial system is affected and shaped in large measure by the proceedings of the municipal court.
- Q. 15. The answers to the subparts of question 15 are found below:
- An appeal from a district court  
Court of Appeals
  - A divorce case  
State District Court
  - A speeding ticket  
Municipal or Justice of the Peace Court
  - A felony murder case  
State District Court
  - An appeal from a municipal court  
County Court
  - A child support or child custody case  
State District Court
  - An ordinance violation  
Municipal Court (with the exception of sign ordinance violations in the city’s extraterritorial jurisdiction which may also be in the justice court)
  - An appeal from the justice courts  
County Court
  - A death penalty appeal  
Court of Criminal Appeals
  - An appeal from a municipal court of record  
County Court

### **PART 3**

- Q. 16. False. Section 720.002, T.C., prohibits quotas by municipal courts.
- Q. 17. True.
- Q. 18. False.
- Q. 19. True.
- Q. 20. False.

### **PART 4**

- Q. 21. False.
- Q. 22. False.

- Q. 23. False.  
Q. 24. True.  
Q. 25. True.

#### **PART 5**

- Q. 26. Every time appointment, election, reappointment or reelection occurs; with each new term of office.  
Q. 27. The statement of officer.

#### **PART 6**

- Q. 28. Decorum includes observing correct judicial procedures and customs. Starting on time, allowing time to permit full hearings, being courteous to all who appear in court, and being firm are examples. (*Answer varies from clerk to clerk*)  
Q. 29. If possible, have the municipal court in a separate public building or in a separate portion of city hall. Have separate entrances into the court and into the police department. The court should not be located within the confines of the police department or the police chief's office. (*Answer varies from clerk to clerk*)

#### **PART 7**

- Q. 30. The answers to the subparts of question 31 are found below:
- Training and written materials on how to run your court  
Texas Municipal Courts Education Center
  - The proper forms to report traffic convictions or bond forfeitures  
Department of Public Safety
  - Statistical data on other courts of your size  
Texas Judicial Council/Office of Court Administration
  - Driving records  
Department of Public Safety
  - Help with collecting the proper court costs  
Comptroller's Office
  - General information on city government  
Texas Municipal League
  - A question about judicial ethics  
Commission on Judicial Conduct
  - A question about the crime victims program  
Attorney General's Office
  - Questions about the court clerks' certification program  
Texas Municipal Courts Education Center or Texas Court Clerks Association
  - A legislative proposal regarding prosecutors in municipal court  
Texas Municipal Courts Association or Texas Municipal League