

REGIONAL CLERKS SEMINAR

November 27-28, 2012 • Austin

Omni Southpark

Day 1 (Tuesday)

November 27, 2012

- 12:00 – 5:00 p.m. **Registration**
- 1:00 – 5:00 p.m. **Preparation Courses: Clerk Certification Study Sessions**
Level I: Leisa Hardin, Court Administrator, City of Mansfield
Level II: Lisa Mayo, Client Services Coordinator, McCreary, Veselka, Bragg & Allen, P.C.
- 1:00 – 5:00 p.m. **Pre-Conference Session: Tools for Effective Court Administration**
Mark Goodner, Program Attorney & Deputy Counsel, TMCEC
Katie Tefft, Program Director, TMCEC

Day 2 (Wednesday)

November 28, 2012

- 6:45 – 7:50 a.m. **Registration and Breakfast**
- 8:00 – 8:15 a.m. **Announcements**
- 8:15 – 9:25 a.m. **Sovereign Citizens: Threats to Our Courts?**
David Hamilton, Prosecutor, City of Reno-Lamar County
- 9:40 – 10:55 a.m. **Internal Controls: Keeping Tabs on the Court’s Cash**
Leah Huff, Court Implementation Consultant, Tyler Technologies
- 11:10 – 12:00 p.m. **Fun with Fees**
Katie Tefft, Program Director, TMCEC
- 12:00 – 12:50 p.m. **Lunch**

| | Track A – JUVENILES | Track B – PROCEDURES | Track C – SHARED |
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| 1:00 – 1:55 p.m. | ABCs in Municipal Court: An Elementary Exploration of the Alcoholic Beverage Code* Pat Riffel, Court Administrator, City of Pearland | So You Think You Can’t Be Sued? A Primer on Immunity for Clerks Erin Higginbotham, Attorney, Denton, Navarro, Rocha & Bernal, P.C., Austin | Foreign Language Interpreters Carrie Chavez, Attorney, Dallas |
| 2:05 – 2:55 p.m. | Juveniles Behind the Wheel: Laws for Young Drivers* Mara Dudley, Court Administrator, City of Llano | Dissecting DSC* April Christiansen, Court Administrator, City of Cedar Park | Talking to Your Town (DRSR)* Lindsey Mena, Juvenile Case Coordinator, City of San Marcos |
| 3:05 – 3:55 p.m. | Transfer of Juvenile Cases Shelai Mullins, Juvenile Case Manager, City of McKinney | The MVP of Jury Trials Tammy Odom, Deputy Court Clerk, City of Sweeny | Understanding 3rd Party Collections Glenn Lewis, Judge, City of Forest Hill |
| 4:05 – 5:00 p.m. | Dealing with JNAs (Juveniles Now Adults) Mark Goodner, Program Attorney & Deputy Counsel, TMCEC | The New Laws of Disqualification and Recusal Cathy Riedel, Senior Associate, Bojorquez Law Firm, PLLC | Alive @ 25* Kevin Cotton, Training Director, Texas Alive Team and Deputy Sheriff, Travis County |

5:00 p.m. **Adjourn**

* Denotes Municipal Traffic Safety Initiatives (MTSI) or Driving on the Right Side of the Road (DRSR) curriculum funded by a grant from the Texas Department of Transportation.

Funded by a grant from the Texas Court of Criminal Appeals

2013 Regional Clerks Seminar

Course Descriptions

Optional Pre-Conference Session:

Tools for Effective Court Administration

More than seven million criminal cases are filed in Texas municipal courts each year. This sheer volume of cases presents courts—from the city that last year filed just 11 new cases to the city that filed 1.1 million—with a multitude of opportunities for frustration and “log jams.” Defendants are entitled to their day in court, but what happens when the court rarely convenes or, on the opposite end of the spectrum, when the court docket begins to resemble *War and Peace*? Judges are entrusted with judicial authority, which carries with it certain duties, powers, and limitations. The clerk plays an integral role in maintaining the effective administration of the court and, too, should be aware of the limits on their authority. This session will begin by discussing the judge’s and clerk’s authority, and discuss the use of standing orders to confer otherwise judicial functions onto court staff in an effort to increase court efficiency.

Like the old adage says: *A chain is only as strong as its weakest link.* So too is a court only as efficient as the procedures it employs. While ideally, defendants would always comply with their legal obligation to appear and later satisfy the courts’ judgments and orders, the reality is that the percentage of cases involving non-compliant defendants hinders the rule of law and the administration of justice. Depending on the circumstances, Texas law provides different statutory procedures, both prior to and after judgment is entered, to assist the court in enforcing compliance with its orders to appear or satisfy a judgment. This session will provide a brief overview of those enforcement options under state law, as well as provide participants an opportunity to brainstorm and share practical solutions to combat inefficiency and improve the court’s effectiveness.

By the end of the session, participants will be able to:

1. Explain the authority that law enforcement, prosecutors, judges, and clerks have with regard to the types of duties with which they are tasked;
2. Describe circumstances that could benefit from the utilization of standing orders;
3. Identify the statutory procedures available for the enforcement of court orders;
4. List three practical tools available to courts that could increase the effectiveness of court administration;
5. Assess local court procedures and identify sources of inefficiency; and
6. Develop a plan to implement techniques to improve court efficiency.

General Session Classes:

Sovereign Citizens: Threats to Our Courts?

Sovereign individuals claim to be non-citizens of the state and subscribe to the erroneous belief that no government—state or local—has authority over individuals. These individuals often have

homemade driver licenses, license plates, and identification cards. Sovereign defendants refuse to submit to the court's jurisdiction and claim, for example, that the municipal court is unconstitutional, the municipal prosecutor does not have the authority to prosecute, or that the Legislature is without authority to pass the laws of which the defendant is accused of violating. Improperly citing the Uniform Commercial Code, the Holy Bible, and a host of other texts, sovereign defendants can pose unique arguments, and often file numerous petitions and motions, in an attempt to confuse and even frustrate the judicial system. Such defendants, however, like other difficult defendants with whom the court comes into contact, must be adjudicated in a fair and judicious manner, and a clerk's interaction with these defendants should reflect the same. The court's interaction with these citizens could also present security concerns when those in the court are unprepared or unaware of these citizens' beliefs and tactics.

By the end of the session, participants will be able to:

1. Name a source for the sovereign citizen movement;
2. Recognize the presentation, both in person and on paper, of a sovereign citizen; and
3. Develop two skills for managing contact with a sovereign citizen.

Fun with Fees

Fines and costs and fees...oh my! In 2011, municipal courts in Texas collected approximately \$751 million in fines, costs, and fees. What is the distinction? Consider the following statement: fines are for guilty people; fees are for lucky probationers; and costs are for everyone. Perhaps this explanation is a little too simplistic, as the traditional notion of a fine, a fee, and a cost does not reconcile with the labels the Legislature has ascribed to those charges courts assess.

Municipal courts dismissed 1.8 million cases last year after defendants completed a deferred disposition, driving safety course, brought in proof of financial responsibility, or remedied a violation that provides a compliance dismissal. In some of these instances, defendants are assessed fees in the form of a special expense fee or administrative fee. As clerks are often the ones computing or determining what fees apply to a given charge or case, it is imperative that clerks understand the characterization of these charges. This session will provide an in-depth look at the court's authority and mandate to assess fees in lieu of the traditional fine.

By the end of this session, participants will be able to:

1. Distinguish between a fine, a fee, and a court cost;
2. Identify the legal authority for assessing a fine, fee, or cost; and
3. Determine the appropriate fee that would apply to a given situation.

Internal Controls: Keeping Tabs on the Court's Cash

It is said that money is the root of all evil. That may be extreme, but it is certainly true that handling money poses potential problems from a management, accountability, and security perspective. As stated in the *Texas Municipal Courts Financial Management Handbook*, chances are that if \$500 was missing from a company in your city, it would not be reported to the media. However, if it appears that \$500 is missing from the municipal court, it generally will get media coverage—and often, significant coverage. The public expects and deserves sound financial

management from city officials and employees, and city officials and employees deserve to work in an environment that protects them if they do their jobs correctly. Chances for errors and other irregularities should be minimal. This is where internal controls come in; internal controls serve as a set of financial management checks and balances.

Unfortunately, stories of judges or clerks taking money from the court are neither new nor novel. More often, however, problems arise from an erroneous claim that money is missing where the court has no financial management system to show otherwise. This session will look at the concept and components of internal controls as they relate to cash handling, and present participants with commonly accepted “best practices” for cash handling.

By the end of this session, participants will be able to:

1. Define internal controls;
2. Recognize the consequences of not having internal controls as they relate to cash handling; and
3. List 10 “best practices” for cash handling.

Break Out Track Classes:

ABCs in Municipal Court: An Elementary Exploration of the Alcoholic Beverage Code

In 2011, there were 35,828 non-driving Alcoholic Beverage Code cases filed against children in municipal courts alone. These courts saw another 2,185 children charged with minor driving under the influence of alcohol. These figures do not include the number of minors (age 17 to 20, inclusive) that can also be charged with minor alcohol offenses. Each of these cases pose unique issues for the court because of specific statutory requirements in sentencing (including community service, alcohol awareness classes, and driver license suspension), appearance in open court, reduction of fines, and expunction. This session will focus on those statutory requirements in sentencing, as well as look at the theory behind zero tolerance for minors.

By the end of this session, participants will be able to:

1. Identify alcohol offenses in the municipal court’s jurisdiction;
2. Analyze why there are special alcohol provisions for minors; and
3. Describe the legal requirements for adjudicating minor alcohol offenses.

Juveniles Behind the Wheel: Laws for Young Drivers

According to DPS, there are almost half a million drivers in Texas who are age 18 or younger. Almost 103,000 Class C misdemeanor cases alleging traffic offenses against juveniles were filed in municipal courts alone in 2011. Specific statutory provisions of Texas law apply to minor drivers, such as graduated licensing requirements, restricted driving behavior, limitations on deferred disposition or alternative sentencing, and recent changes related to electronic communication devices commonly used by minor drivers. This session will discuss the laws related to minor drivers, as well as possible sentencing alternatives to better address the responsibilities of minor drivers, to educate minor drivers and those dealing with minor drivers, and to promote responsibility by minor traffic offenders appearing in court.

By the end of this session, participants will be able to:

1. Identify relevant statutes applicable to young drivers;
2. Discuss the need for restrictive laws on young drivers; and
3. Describe the penalties and effective sentencing options for these laws.

Transfer of Juvenile Cases

In the context of juvenile cases (against children ages 10-16, inclusive), waiver of jurisdiction and transfer means that a municipal or justice court has elected not to exercise, or is statutorily prohibited from exercising, its criminal jurisdiction. Upon waiver and transfer, the case potentially becomes a civil juvenile court case, governed by Title 3 of the Family Code. Municipal courts waived their criminal jurisdiction and transferred 4,000 cases against juveniles last year, representing only 2.5 percent of all non-traffic cases filed against children in 2011. This session will examine the rules governing mandatory waivers and discretionary waivers, the transfer process, and factors that should be considered when a judge must decide whether to utilize a discretionary transfer.

By the end of this session, participants will be able to:

1. Identify statutory authority for transferring juvenile cases from municipal court to juvenile court;
2. Distinguish between mandatory and discretionary transfer of juvenile cases; and
3. Describe the process for transferring a case to the juvenile court.

Dealing with JNAs: They Still Need Our Attention

More cases involving children are now adjudicated in municipal and justice courts than in Texas juvenile courts. Many children fail to successfully comply with the order of the court. In other cases, the child never even appears in court. Often, these cases are still pending in court when the juvenile becomes an adult as defined by law. In 2003, the Code of Criminal Procedure was amended to provide specific statutes for “Juveniles Now Adult.” Such statutes balance youth accountability with procedural safeguards for children and young adults.

What can happen when such statutes and safeguards are ignored? In 2011, after having ordered the arrest of children and young adults for status offenses, a justice of the peace in south Texas was convicted for official oppression. As clerks are often the ones who monitor cases for compliance, it is imperative that clerks have a working knowledge of the procedures courts must take when dealing with a juvenile who has since become a legal adult.

By the end of the session, participants will be able to:

1. Define JNA;
2. Restate the mandatory language needed to set the foundation for JNA procedures;
3. Describe the steps in dealing with a juvenile now adult; and
4. Identify applicable documents to the JNA process.

So You Think You Can't Be Sued? A Primer for Immunity on Clerks

While the judge is generally responsible for administering the operations of the municipal court, the court clerk is generally responsible for implementing the policies the judge establishes and for administering court procedures. Clerks and judges should not assume each other's duties. There is a clear separation of judicial and administrative functions that should be clearly understood by both officers, as the consequences for exceeding the scope of one's authority are severe.

Case law is fraught with instances of judges and clerks being sued for the deprivation of a litigant or defendant's rights. Although clerks are generally not entitled to immunity from civil liability for purely ministerial actions, clerks may be entitled to sovereign, judicial, quasi-judicial, or derived judicial immunity depending on the actions taken. This session will navigate the maze of a clerk's immunity, while looking at real examples of cases where a clerk was or was not afforded immunity.

By the end of this session, participants will be able to:

1. Define immunity;
2. Describe three types of immunity; and
3. Evaluate the scope and limits of each type of immunity as they relate to a court clerk.

Dissecting DSC

Article 45.0511 of the Code of Criminal Procedure provides a mechanism for defendants who meet certain requirements to avoid a conviction and have their traffic citation dismissed by successfully completing an approved driving safety course. In 2011, almost 440,000 traffic misdemeanors were dismissed under this article. The statute, however, is one of the lengthiest and complex in Chapter 45. This session will take an in-depth look at Article 45.0511 for new and veteran clerks alike.

By the end of this session, participants will be able to:

1. List the eligibility requirements for taking a driving safety course under Article 45.0511 of the Code of Criminal Procedure;
2. Identify "special issues" related to DSC; and
3. Describe the clerk's role in processing a DSC request.

The MVP of Jury Trials

Texas municipal courts conducted almost 6,000 jury trials in 2011. Although defendants have a constitutional right to a jury trial, a small percentage of defendants exercise that right, opting instead for a bench trial. Coordinating a jury trial can be a daunting task for those courts that have never, or rarely, held one. The process can be likened to preparing for a sporting event—there are logistics to organize, referees, players to monitor, and when it runs smoothly, there is one player who deserves the MVP award: the clerk.

This session will provide a basic look at the process of coordinating a jury trial, with an interactive component, to help prepare the clerk in those courts that rarely hold such trials.

By the end of this session, participants will be able to:

1. Identify the players unique to a jury trial;
2. Describe the roles of these players; and
3. Discuss the role of clerks unique to coordinating jury trials.

The New Laws of Recusal and Disqualification

One of the guiding principles of the American system of jurisprudence is the idea of an independent and neutral judiciary. Americans expect to have their day in court before a judge who will treat their case in an unbiased manner, with objectivity under the law. In order to ensure the aims of justice and to protect the integrity of the judicial system, all municipal court personnel, including the clerk, must understand the law governing (1) disqualification and (2) recusal. Realizing this ideal has been even more complicated in Texas municipal courts, as there had been an apparent conflict in the laws that govern recusal in municipal courts.

S.B. 480, passed by the 82nd Legislature, repealed problematic Government Code Section 29.012 and replaced it with a comprehensive series of procedures located in Subchapter A-1 of Chapter 29 of the Government Code. These new highly detailed laws, adapted from Texas Rule of Civil Procedure 18a, are designed to accommodate all sizes of municipal courts, and strike a balance between uniformity in application of the law and judicial efficiency. The new series of laws can be used in any kind of criminal or civil case in which a municipal court has jurisdiction.

This session will look at the circumstances in which disqualification is required, where recusal is appropriate, and examine the new laws that provide a clear set of procedures when a court is presented with a recusal or disqualification scenario.

By the end of the session, participants will be able to:

1. Describe the distinction between disqualification and recusal;
2. Discuss the constitutions, statutes, and rules pertaining to disqualification and recusal; and
3. Explain the necessary action and procedures involved in disqualification and recusal processes.

Foreign Language Interpreters

Court interpreters provide an essential connection between foreign language speakers and their access to the judiciary. Equal protection and the right to confrontation mandate that defendants who do not speak or understand English be accommodated. The same is true when a non-English speaking witness testifies in court. Accordingly, courts are required to appoint an interpreter when a defendant or witness does not understand the English language. As the Court of Criminal Appeals explained in *Garcia v. State*, 149 S.W.3d 135 (Tex. Crim. App. 2004), “One is not necessarily competent to translate legal proceedings because he or she is bilingual. On the contrary, courtroom interpretation is a sophisticated art, demanding not only a broad vocabulary, instant recall, and continuing judgment as to the speaker’s intended meaning, but also the ability

to reproduce tone and nuance, and a good working knowledge of both legal terminology and street slang.”

The need for an interpreter may be raised by a party or on the court’s own motion, and the laws vary on what kind of interpreter must be appointed; one must consider the court the proceeding is in, the language needing interpretation, and the availability of licensed interpreters within a specific radius, etc. One thing is clear, however: the law requires the court to appoint one.

The laws for foreign language interpreters can be found in Article 38.30 of the Code of Criminal Procedure, Chapter 57 of the Government Code, and case law. Violation of these laws carries criminal penalties and raises serious ethical concerns. This session will discuss the laws, logistics, resources, and ethics of using foreign language interpreters in municipal courts.

By the end of this session, participants will be able to:

1. Identify the laws pertaining to the use of foreign language interpreters in municipal court;
2. List three resources available to municipal courts regarding the use of foreign language interpreters; and
3. Discuss the ethical and legal implications of using unlicensed/unqualified interpreters in court proceedings.

Talking to Your Town (DRSR)

A court’s involvement in their community is often reactive—that is, the court becomes involved only after a case is filed charging a citizen with a criminal offense. Municipal judges and court personnel are in the unique position, however, to be proactive when it comes to addressing those behaviors in their community that could precipitate criminal charges. The Code of Judicial Conduct allows judges—and by extension, court staff—to speak on issues concerning the law. Through the Driving on the Right Side of the Road grant from TxDOT, judges and clerks have at their disposal resources to engage in this proactive outreach in their community. This session will look at the benefits of and resources for judges and court staff to talk to their town about issues of public and traffic safety.

By the end of this session, participants will be able to:

1. List the benefits of proactive outreach for municipal judges and court personnel;
2. Identify available Driving on the Right Side of the Road resources; and
3. Explain ways to expand their court’s outreach program.

Understanding 3rd Party Collections

Article 103.0031 of the Code of Criminal Procedure allows cities to enter into a contract with a private attorney or public or private vendor for collection services for debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, or restitution ordered by a court. The statute also allows these contracts to cover the amounts that would be acceptable to the court on those cases in which a defendant has failed to appear. Specific rules govern the timeline in which a case may be turned over to collections, the fee that may be charged for these collection services, and how the unpaid amounts may be collected. This session will take an in-

depth look at the authority for a city to enter into a collection contract under Article 103.0031, respond to some of the myths or criticisms about collection contracts, and help participants decide whether such a contract would work in their city.

By the end of this session, participants will be able to:

1. Identify the laws governing third party collection contracts for courts;
2. Describe the interplay between a third party collection agency and other enforcement options available to the court; and
3. Explain the legitimate role of a third party collection agency in collecting court debts.

Alive @ 25

The 82nd Legislature amended Section 45.051 of the Code of Criminal Procedure (Deferred Disposition) allowing a judge to order a defendant under the age of 25, who is charged with a moving violation, to—in addition to taking the mandatory “traditional” driving safety course—take an additional driving safety course specifically geared toward younger drivers. This course, generally termed Alive @ 25, is a four-hour live class developed by the National Safety Council. The program focuses on good decision-making while the driver or passenger in a motor vehicle and is one more tool that municipal courts can use to influence young drivers.

By the end of this session, participants will be able to:

1. Describe the Alive @ 25 program and curriculum;
2. Discuss Texas’ young driver problem; and
3. Explain how local governments can implement the Alive @ 25 or similar programs.